

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL 74-1270

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

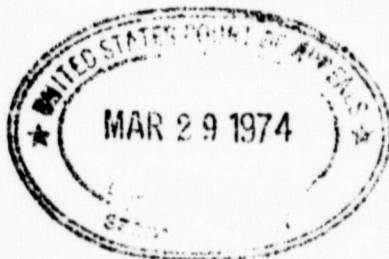
v.

JOSEPH MAURO,

Defendant-Appellant.

*On Appeal From The United States
District Court For The Southern
District Of New York*

APPELLANT'S APPENDIX



AARON SCHACHER
Attorney for Defendant-Appellant
32 Court Street
Brooklyn, N.Y.
212-855-10003

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
Attorney for Appellee
U.S. Court House
Foley Square
New York, N.Y. 10007
212-264-6531

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TITLE OF CASE

ATTORNEYS

Spec. AUSA Michael C. Berthard

vs.

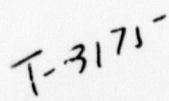
Filed: 2/6/74

2) ALFRED POZANGOFF

JOSEPH FAURO

For Defendant:

13 ER. 489 74-107



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PROCEEDINGS

- 7-11-73 Filed notice of readiness for trial.
- 7-11-73 ROMANOFF- Filed affirmation and notice of motion for severance
- 7-11-73 ROMANOFF- Filed notice of motion for a bill of particulars
- 7-11-73 ROMANOFF- Filed notice of motion for discovery & inspection
- 7-11-73 ROMANOFF- Filed affirmation of Gregory J. Perrin re defendants motion for inspection and discovery.
- 7-20-73 ALL DEFTS.-Filed Govt memorandum of law in opposition to deft. Bruce Romanoff motions
- 7-20-73 ALL DEFTS.-Filed Govt affidavit in opposition deft's Bruce Romanoff motions.
- 7-24-73 BRUCE ROMANOFF-Filed memorandum of deft. in support of his pending pre-trial motions.
- 10-10-73 Filed MEMO ENDORSED on Motion For A Bill Of Particulars filed 7-11-73, Motion granted in part and denied in part in accordance with Memorandum decision filed herewith-- WARD
- 10-10-73 Filed MEMORANDUM on the motion for discovery & inspection to the grand jury minutes is denied except as consented to by the Gov't. The motion for a bill of particulars is granted. The motion for a severance is denied -- WARD, J.
- 10-10-73 BRUCE ROMANOFF- Filed MEMO ENDORSED ON Notice Of Motion for Severance filed 7-11-73, Motion denied in accordance with memorandum decision filed herewith -- WARD, J.
- 10-10-73 BRUCE ROMANOFF - Filed MEMO ENDORSED ON Motion For Discovery And Inspection filed 7-11-73, Motion denied except as consented to by the Gov't. So ordered. -- WARD, J.
- 10-19-73 Filed Pltff's Bill Of Particulars numbered in accordance with the requests of the deft BRUCE ROMANOFF.
- 11-14-73 PASQUALE COCCO- Deft, with atty John P. Curlew present, withdraws plea of Not Guilty and pleads Guilty to Ct.1. Bail cont'd \$15,000. P.R.B. signed by member of family continued. P.S.I. ordered. Sentence date 12-27-73.
- BRUCE ROMANOFF- Deft, with atty Gregory J. Perrin present, withdraws plea of Not Guilty and pleads Guilty to Ct.1. P.S.I. ordered. Sentence date 12-27-73 at 9:45 AM. Bail set for \$10,000 P.R.B. cont'd.
- JOSEPH MAURO- Deft, with atty George Rosenbaum present. Trial set for Nov 10, 73-MA
- 11-19-72 Trial begun as to Deft MAURO.
- 11-20-73 Trial continues.
- 11-21-73 Trial continues.
- 11-23-73 Trial concluded. Jury deliberating. (Juror #1, Mrs. Beck, excused. Alternate Juror #1 Mrs. Justina Moran will be Juror #1 in place and stead of Mrs. Beck).
- Verdict-Guilty as charged. P.S.I. ordered. Sentence date 12-27-73. Bail of \$15,000. P.R.B. cont'd. -- WARD, J.
- 1-10-74 Filed transcript of record of proceedings, dated 11-14-73
- 1-23-74

ONLY COPY AVAILABLE

PROCEEDINGS

- 1-28-74 Filed transcript of proceedings, dated Nov 1970, 71, 23-1973
- 1-30-74 PASQUALE COCCO- It is Adjudged that the Deft is hereby committed to the custody of the Atty General for imprisonment for a period of EIGHTEEN (18) MONTHS. - REMANDED. Count 2 dismissed on motion of Defts counsel with the consent of the government - WARD, J.
- 1-30-74 ROMANOFF, BRUCE- It is Adjudged that the Deft is hereby committed to the custody of the Atty General for imprisonment for a period of SIX (6) MONTHS on Count #1. Deft is continued on present bail until February 8, 1974, at 10:30 A.M. at which time the Deft is to surrender to the U.S. MARSHALL for service of sentence. Count 2 is dismissed on motion of Deft's counsel with consent of the government - WARD, J.
- 1-30-74 MAURO, JOSEPH- It is Adjudged that the Deft is hereby committed to the custody of the Atty General for a period of THIRTY (30) MONTHS on Count 1 and THIRTY (30) MONTHS on Count 2. Sentence on Count 2 to run concurrently with sentence on Count 1. Deft. is continued on present bail until he posts bail pending appeal fixed in the amount of \$15,000.00 P.R.B. co-signed by his wife. Bail limits extended to New Jersey and Connecticut, - WARD, J.
- 2-6-74 JOSEPH M. MAURO - FILED NOTICE OF APPEAL FROM FINAL JUDGMENT ENTERED ON Jan. 30-74 m/n

A TRUE COPY

RAYMOND F. BURCHARDT, Clerk

By John David
Deputy Clerk

ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

No. 73 Cr. 489

JOSEPH MAURO

On this 30th day of January, 1974 came the attorney for the government and the defendant appeared in person and by Aaron R. Schacher, Esq.

IT IS ADJUDGED that the defendant upon his plea of not guilty, and a verdict of guilty by a jury has been convicted of the offense of unlawfully, wilfully and knowingly, possessing, bartering, selling and disposing of property, money and things of value exceeding \$100, to wit, three cashiers checks (Title 18 U.S. Code, Secs. 2113(c) and 2) and conspiring so to do (Title 18, U.S. Code, Sec. 371). As charged in counts 1 and 2 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized

representative for imprisonment for a period of THIRTY (30) MONTHS on count 1 and THIRTY (30) MONTHS on count 2.

Sentence on count 2 to run concurrently with sentence on count 1.

Defendant is continued on present bail until he posts bail pending appeal fixed in the amount of \$15,000.00 P.R.B. co-signed by his wife.

Bail limits extended to New Jersey and Connecticut.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/ Robert J. Ward
United States District Judge.

s/ Raymond F. Burghardt
Clerk.

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

PASQUALE COCCO,
JOSEPH MAURO and
BRUCE ROMANOFF,

Defendants.

The Grand Jury charges:

1. From on or about July 1, 1972, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, PASQUALE COCCO, JOSEPH MAURO and BRUCE ROMANOFF, the defendants, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 2113(c).

2. It was part of said conspiracy that the defendants would receive, possess, barter, sell and dispose of property, money and things of value exceeding \$100, to wit, three cashiers' checks made out in the total amount of \$8,410,000, knowing the said checks to have been unlawfully taken and carried away from the First National City Bank, Broadway and 56th Street, Manhattan, New York, the deposits of which are insured by the Federal Deposit Insurance Corporation.

3. Among the means whereby said defendants carried out the conspiracy were the following:

- a) The defendants PASQUALE COCCO, JOSEPH MAURO and BRUCE ROMANOFF made arrangements to deliver the said stolen cashiers' checks to prospective purchasers, for ultimate disposition in Europe.
- b) The defendants COCCO and ROMANOFF displayed photostatic copies of the said stolen cashiers' checks to prospective purchasers.
- c) The defendants COCCO and ROMANOFF arranged with prospective purchasers of said cashiers' checks that said prospective purchasers would place \$25,000 in a safety deposit box pending the disposal of the stolen checks by the purchasers.

OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the defendants, in the Southern District of New York and elsewhere, committed and caused to be committed the following overt acts, among others:

1. On or about February 13, 1973, the defendants PASQUALE COCCO and JOSEPH MAURO attended a meeting at 2011 Nostrand Avenue, Brooklyn, New York.

2. On or about February 16, 1973, the defendant PASQUALE COCCO attended a meeting at Paxton's Restaurant, 74th Street and Second Avenue, Manhattan, New York.

3. On or about February 27, 1973, the defendants PASQUALE COCCO and BRUCE ROMANOFF attended a meeting at Paxton's Restaurant, 74th Street and Second Avenue, Manhattan, New York.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

On or about February 27, 1973, in the Southern District of New York and elsewhere, PASQUALE COCCO, JOSEPH MAURO and BRUCE ROMANOFF, the defendants, did unlawfully, wilfully and knowingly, possess, barter, sell and dispose of property, money and things of value exceeding \$100, to wit, three cashiers' checks made out in the total amount of \$8,410,000 knowing the said checks to have been taken in violation of Section 2113(b) of Title 18, United States Code, from First National City Bank, Broadway and 56th Street, Manhattan, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(c) and
2)

s/ Harold F. Balser
FOREMAN

s/ Whitney North Seymour, Jr.
WHITNEY NORTH SEYMOUR, JR.
United States Attorney for the
Southern District of New York

ORDER on PRE-TRIAL MOTIONS

United States of America v. Pasquale Cocco, Bruce Romanoff
and Joseph Mauro 73 Crim. 489

Defendant Bruce Romanoff has made three pre-trial motions seeking discovery and inspection, a bill of particulars and a severance.

The motion for discovery and inspection is opposed only insofar as it seeks the arrest records of any witnesses against the defendant, including, but not limited to, the arrest records of "Tony Farula", "Tony Romano" and "Joseph Mauro", the transcripts of the testimony before the grand jury of these three individuals and any other witness who testified regarding the indictment herein and the names and addresses of all grand jury witnesses. Inasmuch as the arrest records of potential Government witnesses are not subject to discovery under Fed. R. Crim. P. 16(b), and defendant has not made a sufficient showing to persuade the Court that he is entitled to the grand jury minutes or the names and addresses of all grand jury witnesses, this motion is denied except as consented to by the Government. The defendant shall be permitted to examine the grand jury testimony of all witnesses for the Government at the trial upon motion made at that time. Fed. R. Crim. P. 6(e); 18 U.S.C. §3500.

The defendant's motions are granted in part and denied in part as hereinabove set forth.

It is so ordered.

Dated: October 10, 1973

s/ Robert J. Ward
U.S.D.J.

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Crump-direct

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prove and they are themselves not evidence, is not evidence.

I ask you not to make any judgments based upon what either Mr. Eberhardt has stated or I may state but your judgment should be made just from the evidence you hear from the stand.

I am certain as you pledged to the Court and to myself and Mr. Eberhardt that you will give your undivided attention to this matter and not make any decisions until all the facts and evidence have been adduced.

Thank you.

THE COURT: We will proceed to the taking of evidence. The Government proceeds first and I will call upon Mr. Eberhardt to produce his witnesses.

MR. EBERHARDT: The Government calls as its first witness, Mr. John Crump.

J O H N C R U M P , called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EBERHARDT:

Q Mr. Crump, I will stand back here to see that you speak loudly.

Mr. Crump, what is your occupation?

A I am assistant controller at the First National

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Crump-direct

11

City Bank.

Q How long have you been an assistant controller?

A About four years.

Q How long have you been employed by the First National City Bank?

A 44 years.

Q As an assistant controller, what are your duties?

A I am one of several officers who make any necessary investigating on losses, forgery claims, disappearances, things of that nature.

Q Would those losses or claims include cashier checks?

A Yes.

Q Did there come a time within the past year that you became involved in an investigation surrounding some missing cashiers' checks?

A Yes.

Q At what branch of the First National City Bank is this investigation focused?

A Broadway and 56th Street.

Q It is here in Manhattan?

A That is right.

Q Mr. Crump, do you know the numbers of those checks?

1 rkrn

Crump-direct

14

2 out when it was and let him describe the circumstances. I
3 think that is a proper way to proceed.

4 MR. ROSENBAUM: Yes. Mr. Eberhardt refers to
5 chronology and I don't know what dates we are speaking of,
6 when the investigation started.

7 THE COURT: That is why I suggested proceeding
8 the way I suggested.

9 If you do that, there will come a time when you
10 ascertain whether certain cashier checks were missing and he
11 will say yes and then he can describe the circumstances.

12 (In open court.)

13 Q With respect to the six cashier checks you men-
14 tioned, did there come a time when you ascertained that these
15 checks were missing from the First National City Bank branch
16 at Broadway?

17 A Yes.

18 Q Can you tell me when the bank came to that realization?
19 tion?

20 A Early January of this year.

21 Q With respect to the determination that they were
22 missing, could you please tell the Court essentially how
23 that determination was made and the course of the investiga-
24 tion?

25 A The cashier checks in the branch are in number

1 rkrn

Crump-direct

15

2 sequence. We determined that the check number immediately
3 before the first one of the six was issued as of July 13 of
4 1972. We determined then that the check sequence immediately
5 after the last number of the six was issued at the branch on
6 July 14, 1972.

7 Q ✓ Mr. Crump, are there any records at all of the
8 First National City Bank which reflect the issuance of the six
9 numbered checks that you have indicated already?

10 A ✓ No.

11 MR. EBERHARDT: Could I have these marked as
12 Government's Exhibits 2, 3 and 4 for identification.

xx13 (Government's Exhibits 2, 3 and 4 marked
14 for identification.)

15 Q Mr. Crump, I have placed before you Government's
16 Exhibits 2, 3 and 4 for identification and ask you if you can
17 please tell the Court in general terms, without specifically
18 telling us what those documents represent, what in fact those
19 documents are?

20 A These would be cashier checks used in the formal
21 course of the bank for such issuance where they would be
22 requested by a depositor or someone else.

23 MR. EBERHARDT: Subject to connection, the Govern-
24 ment is going to move these checks into evidence.

25 MR. ROSENBAUM: I would object at this point until

1 rkrn Crump-direct 16
2 those items which are going to connect the alleged relation-
3 ship of those checks to the Government's case be brought out
4 first.
5 THE COURT: Let me see the documents, please.
6 (Pause)
7 THE COURT: I will sustain the objection at this
8 time.
9 I suggest you go a little further relative to
10 a foundation.
11 Q Mr. Crump, would you please examine the numbers
12 that appear on those checks.
13 Have you so examined them?
14 A Yes.
15 Q Do those serial numbers indicate that those three
16 checks are part of the missing six checks you have indicated
17 to the Court were missing --
18 MR. ROSENBAUM: I object to it as being a very
19 leading question.
20 THE COURT: Sustained as to form.
21 Q Mr. Crump, please examine those three checks and
22 tell us what those three checks represent.
23 Q The check numbers are in the numbers of the six
24 checks that we found to be missing at the branch.
25 MR. ROSENBAUM: At this time the Government would

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Crump-direct

17

1 move subject to connection, of course, the three checks into
2 evidence, Government's Exhibits 2, 3 and 4.
3

4 MR. ROSENBAUM: I would respectfully object to
5 their admission at this point. There is absolutely no
6 foundation at this point that has been laid as to when those
7 checks were missing, how they were discovered missing, if
8 they were missing, when they were apparently recouped if at all
9 by the bank. It is just too vague.

10 MR. EBERHARDT: A determination has been made
11 between approximately July 13th and 14th that they were missing.
12 He has explained how the checks were discovered missing. I
13 would suggest admittedly it is subject to connection but the
14 Government has laid a proper foundation with respect to these
15 checks.

16 THE COURT: You have been assistant controller at
17 the First National City Bank for a long time.

18 THE WITNESS: About four years as assistant
19 controller.

20 THE COURT: One of the things you do is examine
21 forgeries and the like; is that correct?

22 THE WITNESS: Yes.

23 THE COURT: And you investigate forgeries and
24 the like?

25 THE WITNESS: Yes.

rkrm

Crump-direct

18

1
2 THE COURT: Can you tell us from looking at these
3 three checks, whether they are cashier checks which were
4 prepared for the First National City Bank of New York in the
5 regular course of the bank's business, printed up, that is?

6 THE WITNESS: They are the normal checks received
7 from the printer as part of a supply of our regular cashier
8 checks.

9 THE COURT: Do you know the printing, the water-
10 mark of those checks?

11 THE WITNESS: This is our bank seal.

12 THE COURT: And your seal is on those checks?

13 THE WITNESS: Yes.

14 THE COURT: And those would have been checks
15 printed up for the bank in the regular course of its business
16 and in the normal course of the bank's business, would have
17 been issued by the bank, would they not?

18 THE WITNESS: That is right.

19 THE COURT: I will admit the checks subject to
20 connection.

21 Ladies and gentlemen of the jury, there is nothing
22 here whatsoever at this point in the case to connect these
23 three cashier checks up with Mr. Mauro. I want you to know
24 that. It is going to be the obligation of the Government to
25 connect these checks up.

rkrm

Crump-direct

19

Therefore, I am admitting them into evidence and I submit at this point, Mr. Eberhardt, the checks not be shown to the jury and I accept your representation that they will be subject to connection. In the event they are not connected, I will not only strike but have a very direct statement to make to the jury on the subject.

xx8 (Government's Exhibits 2, 3 and 4 received
in evidence.)

THE COURT: Subject to connection.

BY MR. EBERHARDT:

Q With respect to these three checks, again, Mr. Crump, there is no record of these three checks being issued by the First National City Bank?

A None.

MR. EBERHARDT: May I have this marked as Government's Exhibit 5 marked for identification.

xx18 (Government's Exhibit 5 marked for
identification.)

MR. ROSENBAUM: If I may see the checks that were received.

THE COURT: Of course.

MR. ROSENBAUM:: May I question the witness on these checks for a moment.

THE COURT: You are asking for a brief voir dire

1 rkrm

Crump-direct

20

2 after the fact, granted.

3 MR. ROSENBAUM: I just had an opportunity to look
4 at these.

5 VOIR DIRE EXAMINATION

6 BY MR. ROSENBAUM:

7 Q The dates, Mr. Crump, placed on these checks, the
8 dates of issuance, are they placed by the bank or by the
9 payee, the named payee?

10 A It would be done at the bank if they were issued.

11 Q I show you these three documents. Can you tell me
12 if these are dates placed by the bank and I show you the date
13 at the upper right-hand corner of these checks.

14 A The bank did not issue these checks. They were
15 not validly typed at the branch.

16 Q Where would they be typed?

17 A Wherever the checks got to, the checks disappeared.
18 The branch did not issue those checks at all.

19 They disappeared in Brooklyn.

20 THE COURT: Do each of those checks have a serial
21 number on them?

22 THE WITNESS: Each check has a number on them.

23 THE COURT: Would that serial number be placed on
24 it by the printer?

25 THE WITNESS: That is right, they are ordered in

rkrm

Crump-direct

21

sequence.

THE COURT: Mr. Rosenbaum asked you about certain typed dates.

Is it your testimony that the typed dates were not placed on there by anyone at the bank?

THE WITNESS: That is what I believe. The checks were not issued at the branch. There is no record of the checks being issued and if the branch had issued the checks, they would have typed it in its entirety.

Q The named payee on these drafts, they were not in any case prepared by the bank, typed by the bank?

A No.

Q Was the amount filled in by the bank?

A No. The checks were not issued at all by the branch. If they had been issued by the branch, they would have typed it completely, date, amount, payee and so forth.

MR. ROSENBAUM: I have no further questions.

MR. EBERHARDT: If your Honor recalls, the Government had marked Exhibit 5 for identification.

To avoid some of the problems that I confronted with these three checks, may we have another side bar conference.

THE COURT: All right, but let's not have too many of them.

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Crump-direct

22

(At the side bar.)

MR. EBERHARDT: Your Honor, I wanted to alert the Court and defense counsel as to the purpose of this check and again that it is to be offered for identification.

✓ As your Honor recalls in my opening statement, I stated there was conversation between Mr. Cocco, Mr. Mauro and Mr. Villano and Mr. Olsberg about a check that had already been issued in Switzerland. This check was ultimately sent to the bank from Geneva, Switzerland for collection. The Government's contention will be that this is corroborative of the conversation which Mr. Cocco and Mr. Mauro were engaged in on February 13th when they represented that a check had already been worked or attempted to be worked through a Geneva, Switzerland bank.

THE COURT: If you are indicating that that is testimony you expect to give, I will note for the record that the document marked for identification does bear a number within the sequence of six numbers which the witness has testified are missing, and therefore you intend to offer it on the basis that you indicated.

I will hear objection now from counsel and I will rule so there is no interruption later on.

I am assuming now that the testimony which Mr. Eberhardt has indicated he will elicit will in fact be elicited

1 rkrn

Crump-direct

23

2 and any ruling I make on it will be subject to his being able
3 to back up what he has just told us.

4 MR. ROSENBAUM: Subject to that, I have no
5 objection.

6 THE COURT: This will be admitted subject to
7 connection.

8 Again, if you do not hear the testimony that has
9 been represented as coming, you will have the opportunity to
10 move to strike.

11 I suggest you not show the check to the jury at
12 this time.

13 (In open court.)

14 MR. EBERHARDT: Your Honor, I would like to
15 indicate for the purposes of the jury, that your Honor has
16 indicated that Government's Exhibit 5 for identification has
17 been accepted into evidence.

18 THE COURT: Counsel for the Government has
19 offered another cashier check. We have had a side bar con-
20 ference and this check will be admitted subject to connection.
21 It will not be shown to the jury at this time. Counsel will
22 proceed with his case and at such time as I deem it proper,
23 I will permit this check and any other exhibit introduced into
24 evidence to be presented and shown to you, but at the moment
25 I have ruled on the matter and the check will be received

1 rkrn
2 subject to it being connected up further by Mr. Eberhardt.
XX3 (Government's Exhibit 5 received in evidence.)

4 BY MR. EBERHARDT:

5 Q Mr. Crump, would you please look at the serial
6 number on that check and identify that check, please.

7 A That check number is one of the six that were
8 missing.

9 MR. ROSENBAUM: I object to that answer.

10 THE COURT: In other words, you indicated that
11 check numbers 2670676 through 681 were missing.

12 THE WITNESS: That is right.

13 THE COURT: What is the number of the check you
14 hold?

15 THE WITNESS: 2670679.

16 THE COURT: You may proceed.

17 Q Have you seen that check prior to today?

18 A Yes.

19 Q Can you please explain to the Court the circum-
20 stances in which you first saw that check?

21 A I first saw the check the early part of February.
22 The check had been received by our Domestic Collection Depart-
23 ment as a collection item from the Union Bank of Switzerland.
24 It was sent in to us for collection. It was determined that
25 this was one of the missing checks. The Union Bank of

rkrm

Crump-direct-cross

25

Switzerland was informed by cable that it had not been validly issued and that we were retaining the check and turning it over to the Federal Bureau of Investigation.

Q Would you please indicate again if I missed it, the bank had sent that for collection?

THE COURT: The Union Bank of Switzerland.

Q Finally, Mr. Crump, is the First National City Bank a bank that is federally insured by the Federal Deposit Insurance Corporation?

A They are members of the Federal Deposit Insurance Corporation.

Q As of the period of July 13 to 14 of 1972, was the First National City Bank a bank, the deposits of which were insured by the Federal Deposit Insurance Corporation?

A Yes.

Q Just as a matter of note, do you know how long they have been so insured?

A Since it started. I believe in 1971.

MR. EBERHARDT: That is all I have.

CROSS EXAMINATION

BY MR. ROSENBAUM:

Q You say these checks were discovered missing in the early part of January 1973.

A Yes.

rkrm

Crump-cross

27

1 A ✓ No, only this one.

2 Q And the checks when they were allegedly missing,
3 they would have been missing in Brooklyn?
4

5 A Yes.

6 Q And there are no endorsements on those checks; is
7 that right? Other than check 2670679, there are no endorse-
8 ments on the reverse side of those checks, are there?

9 A I don't know, I would have to look at them.

10 There is no endorsement on them.

11 Q ✓ In other words, the bank paid out no money on
12 these checks?

13 A ✓ That is right.

14 Q There were a total of four checks and I understand
15 there were six checks missing?

16 A Yes.

17 Q Do you have any idea where the other two checks
18 are?

19 A No.

20 Q Do you know if the bank has paid out any money on
21 the other two checks?

22 A We have not.

23 Q You say after the checks were found missing, you
24 reported this to the FBI.

25 A That is right.

1 rkrm

Crump-cross

35

2 your bank a cashier's check, would you describe the procedure
3 whereby I would walk out of the bank with a cashier's check.

4 THE WITNESS: The funds received from you would
5 be credited with a copy of the check as evidence of the entry
6 through a clearance procedure to our central area.

7 In the central area, computer, the amount is set
8 up for the number of the check and the amount so that when the
9 check comes in for payment from whoever you gave the check to,
10 it will be matched against that number and amount and paid.

11 THE COURT: In other words, the way I understand
12 it, if I were to walk into the bank and walk out with a
13 cashier's check, the bank would have a copy of that check
14 which it would keep; is that right?

15 THE WITNESS: That is right, forwarded to the
16 central area.

17 THE COURT: When the check came in for payment by
18 the bank.

19 THE WITNESS: It is matched against the number
20 and the amount and paid as long as both are in order.

21 THE COURT: At the central area, are you telling
22 me and telling the jury the bank would have a copy of the
23 check which had been taken by the person who had come to the
24 bank for it?

25 THE WITNESS: It is a duplicate of the check, a

1 rkrn

2 A Right.

3 Q And those copies would be in numerical order when
4 they go down to the branch; is that correct?5 A Yes. Well, they would be I presume in numerical
6 order for the checks that were issued that day.7 Q The only way you could get a copy is if a check
8 was issued otherwise you would have no copy to send down to your
9 clearing branch.

10 A That is right.

11 Q Do you know when the copies come down to the
12 central branch, whether they are checked over to see if they
13 are in numerical sequence?

14 A I don't believe they are.

15 Q You don't know or you don't believe so.

16 A I don't believe they are. Each copy they receive
17 is for an amount in a total credit that they receive.18 Q In other words, there never would have been
19 copies of those checks down at your central branch, the six
20 checks in question?

21 A No.

22 Q And no one down at your central branch realized
23 that those checks were missing until a check came in in the --24 A Well, they did not realize they were missing
25

rkrm

Crump-cross

38

until they were informed after we determined it.

Q And that was in February of 1973?

A January of 1973.

Q So approximately six months went by and no one knew at the bank that there were checks missing?

A That is true.

Q Incidentally, did you ever meet Mr. Mauro at any time, the defendant here?

A No, sir, not that I know of.

Q Did you ever see him at any time?

A I don't believe so.

Q Did you ever see him speak to the person down at the bank who you say was arrested?

THE COURT: He did not say the person was arrested.

Q I am sorry, the person who was discharged from the bank.

A No, not as far as I know. I am not at the branch.

Q Did Mr. Mauro have an account at that bank?

A I don't know.

MR. ROSENBAUM: No further questions.

MR. EBERHARDT: No questions on redirect.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Ladies and gentlemen, we will recess

1 rkkm 6

Turk-direct

2 I understand from his counsel, Mr. Rosenbaum,
3 that his delay in arrival this morning, Mr. Mauro's delay,
4 was as a result of a misunderstanding between counsel and
5 Mr. Mauro. As a result of a discussion, Mr. Mauro went
6 to his attorney's office and expected to meet him there,
7 then come with him to court, so the late arrival of Mr.
8 Mauro is strictly a matter of a misunderstanding, a failure
9 of communication, and should not be held in any way by
10 you against Mr. Mauro.

11 Do you understand that?

12 We will now proceed with the case.

13 MR. EBERHARDT: The Government calls as its
14 next witness, Mr. Frank Turk.

15 F R A N K J . T U R K , called as a witness on
16 behalf of the Government, being first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. EBERHARDT:

20 Q Mr. Turk, I will ask you to keep your voice
21 up and I will stand back here so the jurors can hear you.

22 What is your occupation?

23 A I am an Official Assistant with First National
24 City Bank.

25 Q How long have you been employed by First

rkkm 8

Turk-direct-cross

A Frank J. Turk.

Q Mr. Turk, I ask you if in fact that is your signature?

A No, it is not.

Q Are you positive?

A Yes.

THE COURT: What exhibit is that?

THE WITNESS: Exhibit 2.

MR. EBERHARDT: No further questions.

CROSS EXAMINATION

BY MR. ROSENBAUM:

Q Mr. Turk, do you know who signed that paper?

A No.

Q Do you know whether that paper was taken out of the bank in which you were employed by anyone?

A I heard it was taken out. I don't know by who.

Q You don't know by whom?

A No.

Q Do you know if that check or Exhibit 2 was taken out with any other checks?

A I have heard that several have been taken out.

Q When you say you heard, from whom have you heard this?

MR. EBERHARDT: Objection, number one as to

1 rkkm 12

Riggsbee-direct

2 C O L L E N E E . R I G G S B E E , called as a
3 witness on behalf of the Government, being first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION BY

6 MR. FBERHARDT:

7 Q Miss Riggsbee, I will ask you to speak clearly
8 and loudly so the jury can hear you.

9 What is your occupation?

10 A I am a Note and Form Teller for First National
11 City Bank.

12 Q How long have you been employed by First
13 National City Bank?

14 A Five and a half years.

15 Q What branch are you employed at?

16 A Broadway and 56th Street branch.

17 Q How long have you been employed at the Broadway
18 and 56th Street branch?

19 A The whole time.

20 Q Can you briefly tell the jury what your duties
21 are at the First National City Bank?

22 A Well, at present I am the Collection Teller, you
23 know, working the Foreign Teller window, that is transfer-
24 ring funds abroad and domestic, and I guess doing all type
25 work, including the Note Tellers, as far as journals and

1 rkkm 13 Riggsbee-direct

2 debits and credits, inter-office.

3 Q Miss Riggsbee, I ask you to examine the three
4 documents in front of you, Government's Exhibits 3, 4, 5
5 in evidence, and ask you if you can tell us generally what
6 those documents are.

7 A These are cashier checks that are issued from
8 my department.

9 Q Could you please read the numbers on those
10 checks?

11 A 2670680, 2670681, 2670679.

12 Q I ask you to examine the name that appears in
13 the authorized signature box on those checks. Will you
14 tell us whose name appears.

15 A My name appears on it.

16 Q Miss Riggsbee, in examining those checks, will
17 you tell the jury whether or not that is in fact your
18 signature?

19 A No, it is not.

20 Q Are you sure?

21 A I am positive.

22 Q Miss Riggsbee, are you in fact authorized to
23 sign that type of check?

24 A No.

25 Q Will you tell us what type of checks you are

1 rkkm 14 Riggsbee-direct-cross

2 authorized to sign?

3 A I am authorized to sign teller's checks, a
4 money order type of check. It bears a cashier's check,
5 but it is also an MO, and my limit is \$2,500.

6 Q And the amounts on those checks are over
7 \$2,500?

8 A Yes.

9 MR. EBERHARDT: No further questions.

10 CROSS EXAMINATION

11 BY MR. ROSENBAUM:

12 Q Miss Riggsbee, when did you see those checks
13 first?

14 A Last Friday.

15 Q Beg pardon?

16 A Last Friday.

17 Q You never saw them at any time before that?

18 A No.

19 Q Do you know who signed your name to those
20 checks?

21 A No. I am not authorized to sign.

22 Q Do you know who may have signed your name on
23 those checks?

24 A No.

25 Q Do you have any idea?



rkkm 17

Villano-direct

ANTHONY R. VILLANO, called as a
witness on behalf of the Government, being first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EBERHARDT:

Q Are you presently employed?

A No, sir.

Q Until recently, were you employed as a special
agent of the FBI?

A Yes, sir.

Q How recently?

A Until the 13th of this month.

Q How long had you been employed by the FBI?

A Twenty-four years.

Q How long as an agent?

A Nineteen.

Q In the year 1973, particularly February of 1973,
to what office of the FBI were you assigned?

A The New York office.

Q From time to time while with the FBI, did you
work in what is called an undercover capacity?

A Yes, sir.

Q Could you for the sake of the jury briefly
explain what that term undercover capacity means?

1 rkkm 1B Villano-direct

2 A Although I was an FBI agent, I assumed the
3 role of a hoodlum or a thief in order to catch other
4 thieves.

5 Q Have you ever met an individual named Pasquale
6 Cocco?

7 A Yes.

8 Q Do you know him by another first name?

9 A Patty Coco.

10 Q On what date did you first meet Patty Coco?

11 A February 9 of this year.

12 Q 1973?

13 A Yes, sir.

14 Q Were you on duty as an FBI agent at the time?

15 A Yes, sir.

16 Q As an FBI agent, were you in an undercover
17 capacity at that time?

18 A Yes, I was.

19 Q What name were you using at that time?

20 A I was using the name Tony Romano.

21 Q Where was it that you met Patty Coco?

22 A I met him at a social club on Nostrand Avenue
23 and Farragut Road in Brooklyn.

24 Q Do you remember what time of the day it was,
25 approximately?

rkkm 19 Villano-direct

A It was late afternoon. Approximately 4 o'clock.

Q Could you physically describe Mr. Coco for us?

A Mr. Coco is 45 or 50. He was a former jockey and he kept himself in fairly good shape. He was small, thin and dark.

Q How long did you spend with Mr. Coco on February 9, 1973?

A Approximately 15 minutes.

Q Before you and Mr. Coco parted that day, did you make any arrangements to meet again?

A Yes, we did. We made an appointment to meet on the 13th of February.

Q At whose suggestion?

A As he suggested.

Q As Mr. Coco suggested?

A Yes, sir.

Q Where was that meeting to take place?

A It was either to be at the social club or a bar across the street.

Q The address of that bar or social club is what?

A Nostrand Avenue, right off the corner of Farragut Road.

Q Did you meet Mr. Coco again?

A Yes, sir, I did. I met him on the 13th.

1 rkkm 20 Villano-direct

2 Q Were you again acting in an undercover capacity?

3 A Yes, sir, I was continuing my role.

4 Q Where did you first meet Mr. Coco on February
5 13th?

6 A The social club was closed and I pulled up
7 across the street at the bar.

8 Q You pulled up in an automobile?

9 A Yes, sir.

10 Q Were you with anybody at the time?

11 A Yes, sir. I was with Herbert Olsberg, whom
12 I referred to on the 9th to Mr. Coco as my banker.

13 Q Who is Mr. Olsberg?

14 A Mr. Olsberg was also acting in an undercover
15 capacity, although he was not and is not an FBI agent.

16 Q When you first met with Mr. Coco at the bar,
17 or in the vicinity of the bar, was he alone?

18 A Yes, sir, he was.

19 Q Did you have a conversation at that time?

20 A Yes, sir. It wasn't in the bar, it was outside
21 the bar.

22 Q To the best of your recollection, Mr. Villano,
23 what did you say to Mr. Coco and what did he say to you
24 at this initial confrontation with Mr. Coco?

25 MR. ROSENBAUM: I don't believe this is the

1 rkkm 21

Villano-direct

2 initial confrontation.

3 THE COURT: Yes. I understood there had been
4 a 15 minute discussion some four days earlier.

5 You are speaking of the conversation on the
6 13th of February?

7 MR. EBERHARDT: Yes, your Honor. Let me
8 rephrase the question.

9 Q When you first met Mr. Coco on February 13,
10 what conversation did you have?

11 MR. ROSENBAUM: Again I object. The first
12 meeting on February 13 --

13 THE COURT: Did there come a time on February
14 13, 1973 that you saw Mr. Coco again?

15 THE WITNESS: Yes, sir.

16 THE COURT: And the first time that you saw him
17 on that day, did you have a conversation with him?

18 THE WITNESS: Yes, sir.

19 THE COURT: You may proceed.

20 Q With respect to that conversation, Mr. Villano,
21 what did you say to Mr. Coco and what did Mr. Coco say
22 to you?

23 A I was alone, and Mr. Olsberg was sitting in
24 the car. I pointed Mr. Olsberg out and told him that he
25 was the banker I had that had the connections.

1 rkkm 22

Villano-direct

2 You see, the first meeting on February 9, Mr.
3 Coco made reference to some stolen First National City Bank
4 travelers checks --

5 MR. ROSENBAUM: I object to this.

6 THE COURT: Sustained. Strike it as not
7 responsive.

8 The jury will disregard whatever the witness
9 said about a conversation he may have had on February 9.

10 The reason I do that is, the question that
11 has been asked at this point relates to a conversation on
12 February 13, and under our evidence, an answer is stricken
13 that is not responsive to a pending question if counsel
14 objects.

15 Q Putting aside the conversation you had on the
16 9th, I direct your attention to the conversation you had
17 with Mr. Coco on the 13th.

18 A I pointed out that I had Mr. Olsberg with me,
19 that he was the banker I referred to previously.

20 We then went up to his apartment. He lived
21 next door to the bar.

22 Q Mr. Coco?

23 A Mr. Coco did.

24 He introduced me to his wife, and he told me
25 if we had future dealings and I wanted to locate him and

1 rkkm 23 Villano-direct

2 he wasn't at the bar or the social club, that I should see
3 her and she would direct me to where he was.

4 We thereafter discussed stolen First National
5 City Bank cashier checks --

6 MR. ROSENBAUM: I must object.

7 THE COURT: Sustained.

8 If you had a discussion with Mr. Coco on that
9 subject, would you tell us what you said to him and what
10 he said to you, or if you don't remember the exact words,
11 tell us the substance of the conversation.

12 A I told him, as I said before, that my banker
13 was willing and able to handle stolen First National City
14 cashier checks, and I wanted to introduce him to him. Mr.
15 Coco told me that he would then take me to his partner,
16 that he had no business dealings without his partner.

17 We thereafter proceeded to the car. Mr. Coco
18 directed me to a private residence on East 39th Street near
19 Foster Avenue, not far from the bar.

20 Q Mr. Villano, where was everybody seated in the
21 car?

22 A I was driving the car, Mr. Olsberg was in the
23 passenger seat next to me, and Mr. Coco was directly
24 behind him.

25 Q Once you proceeded to the area of 39th Street,

1 rkkm 25

Villano-direct

2 Q When you arrived at this new location, what
3 then happened?

4 A Patty Coco says I will go across the street,
5 and bring my partner out and continue the discussion.

6 Q Did Mr. Coco exit the car?

7 A Yes, he exited the car and entered a private
8 residence across the street.

9 Q Approximately how long was he gone?

10 A Minutes. Within moments he was back.

11 Q And he returned to the car?

12 A Yes.

13 Q With another individual?

14 A Yes.

15 Q Did he enter the vehicle with this other
16 individual?

17 MR. ROSENBAUM: Objection. Leading.

18 THE COURT: Yes.

19 Did he come back to the vehicle?

20 THE WITNESS: Yes.

21 THE COURT: Describe what he did.

22 A He entered the rear seat he was sitting in
23 before with another individual, who got into the car
24 sitting behind me.

25 He then introduced the other individual to me

1 rkkm 26 Villano-direct

2 and Mr. Olsberg as his partner. Joey.

3 Q I ask you to look around the courtroom today
4 and see if you see the individual introduced to you as
5 Joey.

6 A Yes, I do.

7 Q Would you please indicate who that individual is.

8 A He is sitting next to the defense counsel.

9 MR. EBERHARDT: Let the record reflect that
10 Mr. Villano has pointed out the defendant, Joey Mauro.

11 MR. ROSENBAUM: It is Joseph Mauro.

12 THE COURT: Yes, it is.

13 The gentleman with the red tie?

14 THE WITNESS: Yes.

15 Q What happened then, Mr. Villano?

16 A Then the individual introduced to me as Joey
17 and Patty had a private conversation in which they referred
18 to the check that they had put through --

19 MR. ROSENBAUM: I have to object again. We
20 don't know who is speaking, what is being said.

21 THE COURT: Let's ascertain where it happened.
22 Had they by this time both gotten into the
23 automobile?

24 THE WITNESS: Yes, sir.

25 THE COURT: Where were they sitting?

rklm 27

Villano-direct

1
2 THE WITNESS: Joey was sitting directly behind
3 me and Patty was sitting directly behind Mr. Olsberg.

4 THE COURT: You were in the driver's seat?

5 THE WITNESS: Yes.

6 THE COURT: The man you identified as Joey,
7 or you pointed out as Mr. Mauro, was sitting in the left
8 seat of the automobile?

9 THE WITNESS: That is correct.

10 THE COURT: Am I correct that Mr. Coco was
11 sitting to his right in the rear seat?

12 THE WITNESS: That is correct, your Honor.

13 THE COURT: And they had a conversation?

14 THE WITNESS: Yes. When they first entered
15 the car, Joey was introduced to us.

16 THE COURT: What was said, did they say "This
17 is Joey"?

18 THE WITNESS: Patty said "This is Joey. Tony
19 meet Joey. Herb, this is Joey." I don't believe we shook
20 hands, but we met.

21 Q Did you have further conversations?

22 A We didn't converse because apparently --

23 MR. ROSENBAUM: Objection.

24 THE COURT: Yes.

25 You didn't converse.

1 rkkm 28

Villano-direct

2 A We didn't converse at first because they were
3 continuing a conversation which had begun before they got
4 into the car.

5 Q With respect to this conversation, what did you
6 hear?

7 A This conversation concerned a check, a First
8 National City Bank cashier check which had been deposited
9 and which they were ready to draw on.

10 MR. ROSENBAUM: Again I have to object to that.

11 Q Would you please indicate to the best of your
12 recollection who was saying what and if you can't remember
13 the specifics of the conversation, again, what in substance
14 was said.

15 A I couldn't possibly remember the verbatim
16 conversation.

17 Q Nobody is asking you for vergatim, but the
18 substance of the conversation.

19 A It was as I just testified. They were dis-
20 cussing a check from the First National City Bank which
21 had been deposited --

22 MR. ROSENBAUM: Again I object to this.

23 THECOURT: If this is the substance of what
24 they said to the best of your recollection, I will permit
25 you to give it, but try to tell us in substance what they

1 rkkk 29

Villano-direct

2 were talking about to the best of your recollection, and
3 we all know in a conversation that took place many months
4 ago it is impossible for most of us as human beings to
5 recall exact words. Therefore we are permitting you, as
6 the Court often does in such situations, to tell us the
7 substance, not conclusions you drew, but the general
8 conversation as you heard it and remember it.

9 A Either Joey or Patty asked the other person
10 how the check was doing, how the First National City Bank
11 check was doing, and one of them, and I don't recall which,
12 said it is in there, it is working, we are going to be
13 able to draw against it, it is in Switzerland. That is
14 the substance of what I recall.

15 Q Did there come a time when you yourself engaged
16 in conversation with Mr. Coco and Mr. Mauro?

17 A Yes.

18 Q To the best of your recollection, what was the
19 substance or specifics of that conversation, and the
20 identity of the parties speaking?

21 A Patty told Joey that I had access to counterfeit
22 money, currency, and that I had a large quantity of it.
23 I believe I produced one or two counterfeit ten dollar
24 bills. I showed them to Joey. Joey looked them over and
25 said they looked like they were very good quality. How

1 rkkm 30

Villano-direct

2 much can you get. I said the bigger the package, the
3 cheaper I can get them.

4 He then tried to pin me down to a price.

5 MR. ROSENBAUM: Objection.

6 THE COURT: Yes.

7 What did he say to you?

8 A He said "How many points, what percentage of
9 the face value of the bills do you get." I said "If you
10 take one hundred thousand dollars, it might be 8 per cent
11 or 10 per cent. If you take five hundred thousand dollars
12 worth, it might be less.

13 MR. ROSENBAUM: I respectfully object to that
14 part of the testimony referring to the conversation about
15 the alleged items other than the items alleged to be
16 stolen in this indictment.

17 MR. EBERHARDT: This is all part of the circum-
18 stances of what went on that day.

19 THE COURT: I will overrule it.

20 Q Please continue.

21 A I told him I couldn't give him an exact quote,
22 but I would get back to him and I would get a figure
23 depending upon the quantity he wanted. We agreed I should
24 get this information for him.

25 Q On February 13, in that automobile, did you have

1 rkkm 31 Villano-direct

2 any further discussion?

3 A Yes.

4 Q What, again to the best of your recollection,
5 was that discussion, and with whom?

6 A As I recall, Herb Olsberg expressed his dissatis-
7 faction with me for even mentioning counterfeit money. He
8 was acting the role of a banker, a high type thief, and
9 he thought counterfeiting was a low type crime and he didn't
10 want to become involved with it. He was trying to impress
11 Coco --

12 MR. ROSENBAUM: Objection.

13 THE COURT: Yes. What he said, that is what we
14 want to know.

15 A He said "Tony, stop that crap. I don't want you
16 fooling with that stuff. We can get rich clean without
17 messing with counterfeiting."

18 Then Coco said -- Olsberg said words to the
19 effect, I thought you had some good checks, some big money
20 we could make here, and at that point Patty Coco says,
21 We do, we have approximately four checks totaling ten
22 million dollars stolen from the First National City Bank.
23 They are cashier checks. They were stolen legitimately.

24 He explained to us they were stolen from a
25 warehouse, and their absence wouldn't be missed.

1 rkkm 32

Villano-direct

2 Patty said to Herb, Do you have bankers that can
3 handle checks worth two and a half million dollars each?,
4 and Herb said, it depended. It depended upon how good the
5 checks were.

6 Patty Coco and Joey advised that the checks
7 had perfect signatures.

8 MR. ROSENBAUM: Objection.

9 THE COURT: We will strike that. The jury will
10 disregard the last so we can clear this up.

11 It would appear from what you just said that
12 somebody or somebodies said something about the signatures
13 on the checks.

14 Exactly who said what?

15 THE WITNESS: That I can't recall, your Honor.
16 I recall that Patty Coco began the conversation about the
17 checks. Thereafter they both participated in the conver-
18 sation.

19 MR. ROSENBAUM: Again I have to object. It is
20 highly repetitious. It is constantly being repeated by
21 the witness.

22 THE COURT: Let's disregard the last answer of
23 the witness.

24 You are not sure from whose lips this particular
25 conversation about the signatures on the checks came?

1 rkkm 33

Villano-direct

2 THE WITNESS: I can't recall from whose lips that
3 specific mention or that specific conversation came from.

4 THE COURT: Am I correct, though, it either
5 came from the lips of Mr. Coco or Mr. Mauro and the other
6 gentleman that was present at the time?

7 THE WITNESS: Yes, sir.

8 THE COURT: Would you tell us about the conver-
9 sation?

10 THE WITNESS: The conversation concerned many
11 aspects of these checks.

12 THE COURT: I am talking about the signatures.

13 THE WITNESS: I wanted to explain, your Honor,
14 that the conversation concerned many aspects of the checks
15 and some of the points were brought out by Mr. Coco and
16 some of them were brought out by Mr. Mauro. I don't
17 recall which was brought out by whom.

18 MR. ROSENBAUM: That is an extremely vague answer,
19 and it is again highly prejudicial to defendant. What
20 was said, he doesn't know.

21 THE COURT: He knows what was said.

22 MR. ROSENBAUM: But by whom?

23 THE COURT: He has indicated, Mr. Rosenbaum, that
24 whichever of the two gentlemen made the statement, the
25 other one was present and within site of hearing.

1 rkkm 34

Villano-direct

2 The rest is for the jury ultimately, of course.

3 I will permit the questioning along this line,
4 and you will have cross examination to examine on this
5 subject, and I would give you latitude in that regard.

6 Let's get back to the conversation. This all
7 took place in the automobile?

8 A Yes, sir.

9 Q Was it parked or moving?

10 A I was parked across the street from Mr. Mauro's
11 home.

12 THE COURT: During the conversation, were you
13 turned around on the front seat?

14 THE WITNESS: I was swivelled around on the
15 front seat facing both Patty and Joey.

16 THE COURT: Continue with the conversation,
17 indicating to the best of your recollection what was said
18 and by whom.

19 MR. EBERHARDT: I would like to interject. I
20 don't think he specifically answered or went forward with
21 his statement about signatures. If he could continue at
22 that point.

23 Q What was said about the signatures you alluded to,
24 then go forward.

25 A The signatures were alleged by both people sitting

1 rkkm 35 Villano-direct

2 in the back seat to be perfect forgeries. They advised us,
3 they told us that they had a check which had been deposited--

4 MR. ROSENBAUM: Your Honor, I am sorry to
5 interrupt the witness. When he says "They told us", it is
6 so vague. It sounds as if Mr. Coco and the defendant --

7 THE COURT: If they were talking in unison,
8 it would be they told us. If one said something, indicate
9 one of them even if you are not sure which one.

10 THE WITNESS: It is impossible for me to dissect
11 the conversation as to who said what. They acted as part-
12 ners.

13 MR. ROSENBAUM: Again I object.

14 THE COURT: The jury will disregard the last
15 remark.

16 Do the best you can to the extent of your
17 recollection. I understand that you did not have a note-
18 book and you were not taking down each and every word in
19 shorthand. Take it as a person who is trying to remember
20 and to the best of your recollection, I want to know who
21 said what. If you can't identify who said it, say one
22 said this and the other said that.

23 THE WITNESS: Where did I leave off?

24 THE COURT: You were talking about the signatures.

25 A (continuing) Herb Olsberg when he was asked, I

rkkm 36

Villano-direct

believe by Patty, if he could handle checks of this denomination, said it depended upon a lot of things, there were a lot of aspects. Number 1, how long, and he gave them a set of requirements that he would have to have before he could successfully handle these checks, and they replied that the signatures on the checks were perfect forgeries, and that they then boasted that they had deposited --

MR. ROSENBAUM: Objection.

THE COURT: Sustained.

Boasted is not appropriate. It characterizes a conversation. I can't permit that.

Just what they said. The jury can determine whether they were boasting, telling the truth, not telling the truth. You just tell us what they said and leave the rest for the people in the jury box.

A They told us, we have a check for two and a half million dollars that we deposited in a bank in Canada, a legitimate export account, that this check was then transferred to Switzerland; that a time period had passed of six or seven weeks, and that they were then commencing or preparing to draw funds against this check.

They told us that we would have no problems. They mentioned --

1 rkkm 37

Villano-direct

2 MR. ROSENBAUM: I am sorry to make a nuisance of
3 myself, but when he speaks of they, it becomes very con-
4 fusing at least to myself.

5 THE COURT: Speak of one of them, because
6 obviously they are not a chorus.

7 We recognize from what you said that your recol-
8 lection does not permit you, and I don't think this is
9 unusual, it is up to the jury to determine the weight of
10 evidence of fact, that you don't remember who said which
11 word. Just say if one of them said it, one of the two of
12 them said it, and if Mr. Olsberg or you said something,
13 indicate that you said something or Mr. Olsberg said
14 something.

15 One of them said something, about the signatures.
16 What was said about the signatures on these checks?

17 THE WITNESS: One of them said that the signa-
18 tures were perfect forgeries.

19 A (continuing) Olsberg made comment of the fact
20 that large banks now use computers and he wanted to be
21 assured that the information from these checks had been
22 fed into the computers, and one of them said positively,
23 you can see from our check, it has been out six and seven
24 weeks and nothing has happened so far, so you will have a
25 long period of time in which to negotiate this check.

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One of them said, how many checks can you handle, how many different banks or bankers have you got that you can put these checks in with, and I commented after hearing from them, or one of them, that they had four checks. I commented to Herb, I said Herb, tell them you have four bankers that you could put four and a half million dollar checks through and I will kiss you on the lips; kiddingly, of course.

We continued the conversation. Either Patty or Joey said, We are partners in this. We only get a point and a quarter each. Our end is two and a half points. Our boss gets 23 points, which leaves you with 75, roughly 74 or 75 and a half points to play with.

Q Are you familiar with the term, points?

A Yes. Points usually means percentages.

Q In this particular context, he was speaking of what?

A Percentage of face value of the check.

Q Please continue.

A One of them said, We can appreciate the fact you will have to give the banker a lot of money if he clears this check, but you have a lot of room to operate in.

I believe Patty Coco said, If any one of the four checks clears, we will all be rich.

1 rkkm 39 Villano-direct

2 I believe that was the sum and substance of the
3 conversation.

4 Q How did that conversation conclude, was there
5 any arrangement for another meeting?

6 A Yes.

7 Q What was that?

8 A Patty Coco said we would set up another meeting.
9 Another meeting for, I believe it was the 17th of February
10 at which time we would meet his boss. His boss would
11 thereupon show us the other First National City Bank checks.

12 Q Mr. Villano, are you certain about the date?

13 A I am not one hundred per cent certain. I believe
14 the first meeting was the ninth, the second one was the
15 thirteenth.

16 Q Did you prepare records with respect to this?

17 A Yes.

18 Q If you examined the report of the meeting for
19 the 13th, would that refresh your recollection as to
20 when the next meeting was set up?

21 A Yes.

22 THE COURT: Mark it for identification.

23 (Government's Exhibit 6 was marked for
24 identification.)

25 Q Would you take your time and examine it --

1 rkkm 40

Villano-direct

2 MR. ROSENBAUM: May I know when that report was
3 prepared? Was it prepared immediately after the alleged
4 meeting?

5 THE COURT: You can enquire as to that. He is
6 just looking at a piece of paper. It is not being offered
7 and I don't think it will be by the Government.

8 MR. EBERHARDT: No, your Honor.

9 Q I believe I said the meeting was scheduled for
10 the 17th. I was incorrect. It was scheduled for the 16th
11 of February, 1973, at a restaurant in Manhattan.

12 Q What restaurant?

13 A It was Paxton's Restaurant on Second Avenue.

14 Q Did in fact that meeting occur on the 16th?

15 A Yes, sir.

16 Q Where?

17 A At Paxton's Restaurant in Manhattan.

18 Q Who was present?

19 A Herb Olsberg, myself, Patty Coco and a fourth
20 individual introduced only as Mario.

21 Q That is not to be confused with the defendant
22 Joseph Mauro.

23 A No, it was not Mauro.

24 Q Do you remember approximately what time of day
25 it was?

1 rkkm 41 Villano-direct

2 A It was at night, approximately 9 o'clock.

3 Q At this meeting on February 16, did you have
4 occasion to have discussions with Mr. Olsberg, Mr. Coco
5 and Mario?

6 A Yes, sir.

7 Q To the best of your recollection, what was said
8 and who said it?

9 A I believe when we got there, Patty Coco and
10 Mario were already there at the bar. We then went to a
11 table in the rear of the restaurant. Patty Coco expressed
12 -- Patty Coco was very sorry that his boss couldn't make
13 it; that his boss was tied up on something else, and that
14 he just came to keep the appointment and to apologize for
15 his boss not being present.

16 We discussed the checks again, the First National
17 City Bank cashier checks. He told us, he reassured us that
18 they were still available, that we could still handle them
19 and he showed Herb Olsberg a photostatic copy of one of
20 the checks.

21 Q Was there any other discussion?

22 A Yes.

23 Q What?

24 A Patty Coco then told us that he realized that
25 the checks represented an enormous amount of money, and

1 rkkm 42

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2 that we couldn't buy the checks outright for cash, but
3 we would have to show some good faith and put some money
4 up front before we received the checks, or when we
5 received the checks, and put this money into a bank in the
6 form of an escrow account.

7 He mentioned a figure of \$25,000, and that the
8 escrow account would be held in the name of Herb Olsberg
9 and his boss.

10 Q Was there any other further discussion at this
11 time?

12 A I would like to point out that although this
13 fourth individual Mario was present, he didn't engage in
14 the conversation. We discussed many topics. We discussed
15 driving, women, horses, but as far as this goes, that was
16 basically it.

17 Q Were there arrangements made for another meeting?

18 A Yes.

19 Q Do you recall what those arrangements were, and
20 by whom they were made?

21 A Patty Coco suggested we meet again in the same
22 restaurant, and that we make it at approximately the same
23 time, 9 o'clock, and a date was set for the 20th of
24 February.

25 Q On the 20th, did you again attend a meeting at

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Paxton's Restaurant?

A Yes. Herb and I were there on the 20th.

Q Who else was present?

A Many people, but Patty Coco never showed up.

Q What did you do then?

A We waited --

MR. ROSENBAUM: That is not responsive. He said many people. I am concerned whether Mr. Mauro was there?

THE WITNESS: Absolutely not. Many customers were there at the bar.

THE COURT: No one you were supposed to meet?

THE WITNESS: No.

Q What did you then do?

A We left.

Q That was on the 20th?

A The 20th of February.

Q Did there come a time when you made arrangements for another meeting?

A Yes. I called Patty Coco up the 21st, the following day.

Q And what did he say to you at that time, and what did you say to him?

A I told him I was mad at him for standing us up, and he was very apologetic. He said his boss couldn't

1 rkkm 44 Villano-direct

2 make it, and he had forgotten the name of the restaurant,
3 so he couldn't call me to advise me he couldn't attend.

4 He then assured me that his boss would be
5 available for another meeting on the 27th. I believe it
6 was the 27th of February.

7 THE COURT: Did you arrange a place?

8 THE WITNESS: Yes, we agreed we would meet at
9 the same place, and I repeated the name of the restaurant
10 to him, the location, and I believe I may have given him
11 the telephone number.

12 Q Did you in fact on the 27th meet at Paxton's
13 Restaurant?

14 A Yes, we did.

15 Q What time of day was it?

16 A Approximately 9 o'clock Herb Olsberg and I got
17 there.

18 Q Who was present?

19 A We got there and we were alone at first, then
20 Patty Coco showed up with another individual who he
21 introduced as his boss, Bruce.

22 Q Did Bruce give his last name?

23 A I don't recall it. He may have, but I don't
24 recall.

25 Q Could you describe this Bruce for us physically?

1 rkkm 45

Villano-direct

2 A Bruce was a rather large husky individual, fair
3 complexion, approximately 40 years old, and he had a speech
4 impairment.

5 Q On February 27, the date of this meeting in
6 question, did you engage in conversation?

7 A Yes, sir, we did.

8 Q Will you tell us who was engaged in that
9 conversation?

10 A The conversation was held primarily between
11 Bruce and Herb Olsberg.

12 Q Were you present during this conversation?

13 A During most of the conversation.

14 Q Will you tell us to the best of your ability and
15 recollection what was said during these conversations at
16 which you were present, and by whom, to the best of your
17 recollection?

18 A Bruce said he was present to firm up the deal,
19 to go through all the details of the deal to make sure it
20 was agreeable to him. He told us that he had, I believe
21 it was four First National City cashier checks that had
22 been stolen in such a way that their absence would not be
23 missed; that Herb, if he had the proper contacts and could
24 convince him that he was able to peddle checks of this
25 size, would receive the checks provided he put \$50,000 into

1 rkkm 46 Villano-direct
2 an escrow account.

3 At this point I objected. I objected that we
4 had previously agreed or we didn't agree, but we had
5 previously discussed putting up \$25,000, and now suddenly
6 he wanted \$50,000, and I complained that I would have to
7 borrow the money from Shylocks in East Harlem and pay
8 ridiculous interest rates.

9 I believe Bruce then said perhaps we could make
10 it \$25,000.

11 Bruce then pointed out that he was only receiving
12 23 or 24 percentage points of the face value if they were
13 cashed, that Patty Coco and his partner were only getting
14 2 and a half points, and it would leave Herb and myself
15 and whatever banker we used, the tremendous sum of 75
16 percent of the face value of these checks.

17 He then wanted to know from Herb exactly how he
18 intended to go about putting these checks through. Herb
19 gave him a very complicated financial transaction --

20 MR. ROSENBAUM: I object to this.

21 THE COURT: You have to indicate what he said,
22 were they to do something with the checks or whatever it
23 was.

24 THE WITNESS: It was so complicated, your Honor,
25 that I don't remember all the details of it.

1 rkkm 47 Villano-direct

2 Q To the best of your recollection, what did he say?

3 A Herb said he had a banker in Switzerland, that
4 there was an existing export, a large export account in
5 this bank. Herb then produced computer print-out sheets
6 showing a cash flow somewhere maybe ten million dollars
7 or more. He pointed out that through this banker he could
8 deposit these checks in this account; that he could then
9 set up another account in a Bahamian bank in the Caribbean,
10 then have the funds transferred from Switzerland to the
11 Bahamas in the second bank account, and from the second
12 bank account, he could submit a draft from Florida into
13 the Bahamian bank and have the cash sent to Florida, and
14 he asked if there would be any objection if when we
15 received this money, if they could come to Florida to get
16 their end, and Bruce and Patty reassured them there would
17 be no problem, and Patty said, I would love to go back to
18 Florida, I used to race down there, I know a lot of people.

19 Q Was there anything further discussed?

20 A At this point Bruce kind of excused Patty, and
21 myself from the conversation and told us we could wait at
22 the bar, that they wanted to discuss something in private,
23 so we got up and left.

24 Q Did you at any time re-enter the conversation?

25 A We were at the bar for a short period of time,

1 rkkm 48

Villano-direct

2 and we went back to the table to see how the negotiations
3 were proceeding.

4 At that time Herb and Bruce agreed that they
5 would proceed with the deal that we had laid out, and Bruce
6 directed that Patty go to his car and bring back an attache
7 case.

8 Q Did you see Patty Coco leave?

9 A Yes.

10 Patty Coco left the table and shortly thereafter
11 returned with an attache case which he gave to Bruce.

12 Q Was there any further conversation that you were
13 engaged in?

14 A Yes. Bruce then told Patty Coco and myself to
15 go back to the bar, which we did.

16 Q Did you see any contents exhibited from that
17 briefcase?

18 A No.

19 Q Was there any further discussion at that time?

20 A Just between Patty Coco and myself in the bar.

21 Q To the best of your recollection, did any of
22 those conversations pertain to the matter at hand?

23 A I think they referred to what we were going to
24 do with all the money.

25 Q Recalling if you will, Mr. Villano, the meetings

1 rkkm 49 Villano-direct
2 you just testified to, when was the first time the subject
3 of First National City Bank checks was brought up?

4 A: During the initial meeting with Patty Coco on
5 February 9.

6 Q Who brought it up?

7 A Patty Coco brought it up.

8 Q What did he say?

9 A Excuse me. I should say I brought up the fact
10 I had a banker capable of handling large blocks of securi-
11 ties, bonds, instruments.

12 Q With respect to checks specifically?

13 A After I referred to that, Patty Coco said that,
14 We have 12 or 13 million dollars in stolen First National
15 City Bank cashier checks that are ice cold.

16 Q During this time period that you just testified
17 about, basically the bulk of the month of February, were
18 you involved in other investigations?

19 A Many investigations.

20 Q You devoted a substantial amount of your time
21 to these other investigations?

22 A Certainly.

23 MR. EBERHARDT: No further questions.

24 MR. ROSENBAUM: Before I proceed to cross examine,
25 may I have a few minutes to review some of these notes?

1 rkkm 50

Villano-direct

2 THE COURT: Yes.

3 Let me make an enquiry of the jury.

4 My normal practice is to sit from 9:30 to 1:00,
5 and you have your lunch from 1:00 to 2:00, and we will
6 return and sit until 4:30. That means you have three and
7 a half hours in the morning and two and a half hours in
8 the afternoon.

9 If it would be more convenient to the jury, I
10 would be willing to recess for lunch today at 12:30 and
11 have your lunch between 12:30 and 1:30, which would mean
12 you have three hours in the morning and three hours in the
13 afternoon. Let me enquire of the jury if I may, how many
14 of you would prefer to take the luncheon break at 12:30,
15 and how many would prefer to sit as I normally do until
16 1:00.

17 That looks pretty unanimous, from 12:30 to 1:30.

18 We will take five minutes now and proceed to
19 12:30, and take our lunch break then.

20 Please do not discuss the case in the jury room
21 even though there may be a temptation to do so. In the
22 time being until the case is submitted to you, keep your
23 mind open until the case is submitted to you. You have
24 only heard part of the case.

25 We will take a five minute recess.

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Villano-cross:

(Recess.)

(Jury leaves the courtroom.)

MR. EBERHARDT: I have turned over to Mr. Rosenbaum this morning, the following 3500 material: 3505 through 3514 inclusive.

(Recess.)

(In open court, jury present.)

CROSS EXAMINATION

BY MR. ROSENBAUM:

Q Mr. Villano, do you know Mr. Crump? I think it is John Crump, from the First National City Bank?

A No, sir.

Q You never spoke to Mr. Crump?

A No, sir.

Q When first were you assigned to this investigation with reference to stolen checks from the First National City Bank?

A I wasn't actually assigned to the investigation as such. In other words, covering leads and stuff like that.

Q You were not ever assigned to it?

A Not in the sense of investigating it as a special agent.

1 rkkm 52

Villano-cross

2 Q Were you actually assigned to any investigations
3 in the early part of February 1973?

4 A Yes.

5 Q When you get an assignment, I presume you are
6 supervised, or your boss gives you a written, designated
7 assignment, is that correct?

8 A Yes, sir.

9 Q What were some of the assignments you were
10 designated to investigate in the early part of February,
11 1973?

12 MR. EBERHARDT: I would object to this type of
13 enquiry.

14 MR. ROSENBAUM: One of the last questions counsel
15 asked, he asked whether there were any investigations he
16 was going into at the same time.

17 THE COURT: You opened the door, and within
18 reasonable limits, I will let Mr. Rosenbaum enquire on
19 cross examination.

20 THE WITNESS: I think it would be prejudicial.

21 THE COURT: I am the one who is ruling.

22 Let me ask you this.

23 In February of 1973, can you tell the Court how
24 many separate investigations were assigned to you?

25 THE WITNESS: Approximately a dozen, roughly a

1 rkkm 53 Villano-cross

2 dozen. Anywhere from ten to twenty.

3 Q Ten to twenty or approximately a dozen?

4 A It varied. Sometimes it could be ten, sometimes
5 as high as twenty. A good number would be a dozen.

6 Q When you received these assignments, were they
7 given to you in writing?

8 A Not necessarily.

9 Q Were you assigned to an investigation with
10 reference to counterfeit ten dollar bills?

11 A No, sir, we don't handle counterfeit ten dollar
12 bills.

13 Q You have no investigation with respect to
14 counterfeit ten dollar bills?

15 A We have no jurisdiction.

16 Q Regardless of jurisdiction, do you have any
17 investigations as to counterfeit tens?

18 A Yes.

19 Q Isn't it a fact in the early part of 1973, you
20 were investigating counterfeit tens?

21 A No.

22 Q That is not a fact?

23 A It is not a fact.

24 Q When Mr. Olsberg stated in the car that you were
25 interested in counterfeit tens, that was not a fact, that

1 rkkm 54 Villano-cross

2 was just a misleading statement?

3 A I am sorry, you misunderstood me.

4 Olsberg objected to my dealing in counterfeit
5 money.

6 Q But you made a statement with reference to
7 counterfeit tens in the car that day, did you not?

8 A Yes, sir.

9 Q And that statement with reference to your dealing
10 in counterfeit tens was not an accurate statement, even
11 as an undercover agent, is that your testimony?

12 A You have to appreciate the fact --

13 Q Just answer my question.

14 A I was playing a role.

15 Q Please answer my question.

16 A You are asking me a loaded question that I can't
17 possibly answer.

18 THE COURT: Let's not have any colloquy. The
19 jury can determine for themselves the facts rather well,
20 I am sure, drawing on their own life experience.

21 Let's just have questions and answers and
22 objections if appropriate.

23 MR. EBERHARDT: Might I request the Court to
24 instruct the witness that he answer yes or no, and if he
25 is unable to answer yes or no, to so state for the record.

1 rkkm 55 Villano-cross

2 THE COURT: Answer the question as asked to the
3 best of your ability. If you are unable to answer the
4 question, say so.

5 Q When you spoke in the car and made a statement
6 with reference to counterfeit tens, that had nothing to do
7 with the scope of your investigations, is that correct, is
8 that correct?

9 A That is correct.

10 Q You just at that moment thought that counterfeit
11 tens would be an appropriate subject to bring up?

12 A Exactly.

13 Q But you were not assigned to the cashier checks
14 that were stolen from the First National City Bank?

15 A That is correct, I wasn't assigned to the
16 investigation.

17 Q When first did the investigation of the counter-
18 feit tens become of interest to you -- not the counterfeit
19 tens, the cashier checks?

20 A February 9, early February.

21 Q What prompted that interest in --

22 MR. EBERHARDT: Objection as to relevancy.

23 THE COURT: I will sustain an objection as to
24 form. Perhaps if the question is rephrased, I might permit
25 an enquiry in this area.

1 rkkm 78

Villano-cross

2 A Not really, because I told Coco we shouldn't
3 discuss them in front of Olsberg.

4 Q Mr. Villano, could you have done that at another
5 time without Olsberg being present?

6 A Excuse me?

7 Q Couldn't you have told Patty to go to Mauro's
8 house at another time without Olsberg being present?

9 MR. EBERHARDT: Objection.

10 THE COURT: Sustained.

11 Q When Coco came out of the house with Mauro, they
12 came into the car.

13 A Yes, sir.

14 Q Is it not a fact that you gave a counterfeit ten
15 to Mauro?

16 A I believe I gave them to Coco earlier.

17 Q When Mauro came into the car, did you also give
18 a counterfeit ten to Mauro?

19 A I don't recall.

20 Q Is it possible?

21 A It is possible when the subject matter was
22 brought up. I didn't initiate it.

23 Q And you gave him the counterfeit ten, even though
24 you knew this would allegedly upset Olsberg; is that your
25 testimony?

1 rkkm 79

Villano-cross

2 A To make something clear --

3 Q Please, just answer my question.

4 A Yes.

5 Q Coco and you went back for a meeting at Coco's
6 house, you went back in your car.

7 A Yes.

8 Q You proceeded to get into the car and drive over
9 to Mauro's house?

10 A Yes.

11 Q About how far was that from Coco's house?

12 A Approximately a mile.

13 Q And I presume that you and your partner sat in
14 the front and Coco sat in the rear of the car?

15 A Right.

16 Q Did any discussion take place at that time?

17 A Yes. When we got back into the car.

18 Q You introduced Coco to your partner?

19 A Right.

20 Q That was the first time they spoke with each
21 other?

22 A Yes.

23 Q What did they discuss in your presence, or what
24 did the three of you discuss on the way to Mauro's house?

25 A On the way, I told Coco that this was the banker

1 rkkm 83

Villano-cross

2 A I have no idea.

3 Q You drove up to Mr. Mauro's house. About what
4 time did you get to Mr. Mauro's house on February 13?

5 A Approximately 9:30, ten o'clock.

6 Q In the evening?

7 A Yes.

8 Q Do you recall the weather conditions that day?

9 A It was a very nice night.

10 Q Mauro came into your car after Coco went to
11 get him?

12 A Right.

13 Q I believe you testified that the conversation
14 took place between Olsberg and Mauro, and you and Mauro,
15 and you, Olsberg and Coco, is that correct?

16 A Would you go through that again, please?

17 Q When Mauro came into the car, did you speak to
18 Mauro at all?

19 A I was introduced to him.

20 Q Did Olsberg speak to Mauro at all?

21 A He was introduced to him.

22 Q Aside from the introduction, did Olsberg speak
23 to Mauro about anything?

24 A Yes.

25 Q What did he speak to him about, that you heard?

1 rkkm 84

Villano-cross

2 A About First National City Bank cashier's checks.

3 Q What did Olsberg say to Mauro with reference to
4 the checks?

5 A He wanted to see them.

6 Q What did Mauro say?

7 A They said --

8 Q What did Mauro say?

9 A A I testified earlier that I couldn't recall exactly.

10 Q Did Mauro say anything with reference to those
11 checks?

12 A Positively.

13 Q What did he say?

14 A Many things, but I can't say that he said We
15 want so many points --

16 Q I didn't ask that question.

17 I asked you what did Mauro say to Olsberg with
18 reference to those checks?

19 A I can only say that Mauro and Coco discussed
20 the checks with Olsberg. They both participated. I recall
21 that Mauro--

22 Q Just a minute.

23 THE COURT: He is answering your question.

24 A -- that Mauro was much more intelligent than
25 Coco, and had a better grasp of the handling of these checks

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Villano-cross

MR. EBERHARDT: Might we approach the side bar with respect to this?

THE COURT: Let's see if there is a question that is going to be asked. There may not be at this point.

Q Did you use any electronic device?

A No, sir.

Q And you made no notes?

A That is correct.

Q Did you use any electronic device in any of your meetings between Mauro and yourself or Coco and yourself?

A I believe the last meeting we may have used one as a signal.

Q Are you referring to Paxton's Restaurant?

A Yes.

Q Before February 13, 1973, did you ever meet, speak to, have any contact with Mr. Mauro?

A No, sir, I did not.

Q After February 13, 1973, the meeting which took place in the car, did you ever speak to, have anything to do, discuss, meet with Mr. Mauro with reference to First National City Bank checks?

A No, sir, I did not.

Q Did you ever meet with Mr. Mauro at any time with reference to anything regarding counterfeit tens,

1 rkhn 89 Villano-cross
2 tellers checks, cashier checks, stock certificates, before
3 or after February 13?

4 A No, sir.

5 Q How long was this meeting in the car on February
6 13, 1973?

7 A Approximately 15, 20 minutes.

8 Q Before Mr. Mauro left the car, did you give him
9 a counterfeit ten or a couple of counterfeit tens?

10 A I am not sure if I did or not. I know I gave
11 some to Patty Coco. Whether I gave one to Mr. Mauro or
12 whether he received one from Patty Coco, I don't recall.

13 Q Do you recall whether you had any conversation
14 with Mr. Mauro at that meeting on February 13 with
15 reference to counterfeit tens?

16 A Yes, we did.

17 Q How long did that conversation take place?

18 A Minutes.

19 Q How many minutes?

20 A Two, three, four minutes.

21 Q At that point did you ask Mr. Mauro can he get
22 rid of or sell or utilize or dispose of these counterfeit
23 tens?

24 A Yes.

25 Q Did Mr. Mauro say anything with reference to that?

1 rkkm 90 Villano-cross

2 A Yes.

3 Q Did he tell you he could?

4 A He said he could.

5 Q Did you ever follow that up?

6 A No.

7 Q Yet you gave him counterfeit tens.

8 A I didn't say that. I said he might have had
9 one either from me or Mr. Coco, maybe.

10 Q You are testifying that Mr. Mauro said he could
11 do something with counterfeit tens, yet you never met
12 him after that?

13 A No, sir.

14 Q Did you initiate the conversation with Mr. Coco
15 with reference to the tellers checks?

16 A No, sir.

17 Q Did Mr. Olsberg initiate the conversation with
18 reference to these tellers checks?

19 A What meeting are you speaking of?

20 Q The February 13th meeting.

21 A This is a conversation between Olsberg and Coco.
22 I am sorry, did I misunderstand you?

23 Q Only with reference to Mr. Mauro and these
24 checks of two and a half million dollars, or any other
25 tellers checks, did Mr. Mauro initiate any conversation

* * *

1 rkkm 92

Villano-cross

2 A I believe Mr. Mauro started the conversation
3 about the counterfeit tens.

4 Q And Mr. Olsberg said what?

5 A He was displeased. He acted displeased.

6 Q After his displeasure was displayed, you referred
7 back to the teller check?

8 A Right.

9 Q Mauro introduced the discussion about the
10 counterfeit tens?

11 A Yes.

12 Q Mauro did not introduce the discussion as to the
13 teller's or casnier checks?

14 A No, I can't say that he did.

15 Q After that meeting in the car, you left with
16 Coco, and Mauro went back to his house?

17 A Yes.

18 Q Where did you proceed with Coco and Olsberg?

19 A I believe we took him back home, or the bar.

20 Q And you made arrangements to meet him again?

21 A Yes.

22 Q You also said that you spoke with Mr. Bruce
23 Romanoff?

24 A Yes.

25 Q And you met with him at Paxton's Restaurant?

1 rkkm 93

Villano-cross

2 A Yes.

3 Q How many times did you meet with Mr. Romanoff?

4 A Once, just once.

5 Q He never mentioned Mauro's name with you?

6 A No, sir, he did not.

7 Q He never mentioned Mauro's name?

8 A No, he did not.

9 Q And you met in there a man by the name of Mario?

10 A Yes.

11 Q And Mario didn't say anything to you about
12 Mauro, either?

13 A No, sir.

14 Q On February 20, 1973, you went to Paxton's
15 Restaurant?

16 A Yes, sir.

17 Q No one was there, including Mauro, except for
18 customers?

19 A Yes.

20 Q Then you returned there on February 27, I believe?

21 A Yes.

22 Q Mauro was not there on that day?

23 A No.

24 Q Romanoff did not mention Mauro's name?

25 A He did not.

1 rkkm 94 Villano-cross-redirect

2 Q Coco did not mention Mauro's name?

3 A He did not.

4 MR. ROSENBAUM: No further questions.

5 REDIRECT EXAMINATION

6 BY MR. EBERHARDT:

7 Q With respect to the meeting at Paxton's Restaurant
8 on the 16th of February, was there mention by anybody of
9 Mr. Coco's partner?

10 A There was only mention made on the 27th of the
11 disposition of the spoils of what we realized, the point
12 or percentage disposition, but no mention made of him
13 by name.

14 MR. EBERHARDT: No further questions.

15 THE COURT: You may step down.

16 (Witness excused.)

17 THE COURT: Call your next witness, please.

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2 MR. EBERHARDT: The government calls
3 Herbert Olsberg.

4 H E R B E R T O L S B E R G, called as a wit-
5 ness by the government, being first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. EBERHARDT:

9 Q Mr. Olsberg, what, if any, is your relation-
10 ship with the federal government?

11 A I have been cooperating with the federal govern-
12 ment in approximately 12 cases.

13 Q Over what period of time?

14 A As an undercover agent for them. Over a
15 period of 14 months.

16 Q Have you ever been directly employed by a federal
17 law enforcement agency?

18 A No, sir.

19 Q Will you briefly tell the jury what your
20 role consists of when you say undercover capacity?

21 A My role consisted of operating in specifically
22 that area as an undercover capacity in buying checks
23 or other items that the bureau would request that I do.

24 Q Have you received any moneys from the federal
25 government with respect to this relationship that you
have had about the federal government?

1 rka2 Olsberg-direct

2 A Yes, sir, I have.

3 Q Can you tell us approximately how much you
4 received?

5 A Approximately \$13,000.

6 Q What does that \$13,000 represent?

7 A The \$13,000 represents expenses and reward
8 money.

9 Q You mentioned that you were involved in
10 approximately a dozen different investigations. Was
11 one of these dozen investigations an investigation
12 involving First National City Bank checks?

13 A Yes.

14 Q Did you receive any money with respect to your
15 services in that investigation?

16 A Yes, sir, I did.

17 Q How much was that?

18 A I received a \$4500 reward. This was approxi-
19 mately two and a half weeks after the recovery of
20 three First National City Bank checks on March -- the
21 money was given to me on March 15, 1973.

22 Q You are saying you received \$4500 some two
23 weeks after the recovery of some missing First National
24 City Bank checks?

25 A Yes.

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Olsberg-direct

Q Had you been promised a reward in advance of this investigation?

A No, sir.

Q Mr. Olsberg, what is your current status?

A I am currently a federally relocated witness. I have a new identity from the government.

Q Mr. Olsberg, do you receive any moneys in connection with that new status?

A Yes, I do. I receive maintenance.

Q Maintenance is living expenses.

A Living expenses.

Q Are you married?

A Yes, I am.

Q Do you have children?

A Seven children.

Q Mr. Olsberg, have you ever been convicted of a crime?

A Yes, I have.

Q What crime was that?

A I was convicted on two counts of fraud and one count of an NSF check.

THE COURT: I assume by that you mean insufficient funds or not sufficient funds check?

THE WITNESS: Yes.

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Olsberg-direct

Q How long ago was that?

A 1955.

Q Have you ever been convicted of any other crime?

A No, sir.

Q Do you remember approximately when your relationship with the government first began?

A Fourteen months ago.

Q That is early fall of 1972, is that right?

A Yes, sir.

Q Mr. Olsberg, did there come a time when you met an individual named Patty Coco?

A Yes, sir.

Q Is Patty Coco also known by the name of Pasquale Cocco?

A Yes, sir.

Q Could you describe him physically?

A Mr. Coco is a white male of slender build, approximately five foot four inches tall, with a ruddy complexion.

Q When did you first meet Mr. Coco?

A I met Mr. Coco on the evening of February 13, 1973.

Q Approximately what time?

1 rka5 Olsberg-direct

2 A . Approximately 7, 7 p.m. in the evening.

3 Q Can you tell the jury the circumstances that
4 led up to that introduction on February 13th?

5 A You mean by the circumstances how I arrived
6 there?

7 Q Let me ask you one question.

8 Who introduced you to Mr. Coco?

9 A Mr. Coco, I was introduced to Mr. Coco by
10 a special undercover agent from the FBI, Mr. Anthony Vil-
11 lano.

12 Q With respect to that introduction by Mr.
13 Villano, would you please tell us the circumstances that
14 led up to that introduction?

15 A Mr. Villano and I drove up to an address on
16 Nostrand Avenue in Brooklyn on the evening of February
17 13, 1973 and we parked in front of a bar across the
18 street from 2011 Nostrand Avenue.

19 Mr. Villano was driving the automobile, He
20 exited the vehicle and went into the car and a couple
21 of minutes later he came out with an individual and they
22 turned to the left and went into the entranceway to
23 the building.

24 Several minutes later Mr. Villano came down
25 with the same individual. They approached the car.

1 rka6 Olsberg-direct

2 Mr. Villano got into the driver's seat. The individual
3 entered the back of the automobile and sat directly
4 behind me.

5 At this time Mr. Villano introduced me to
6 the individual as Patty Coco.

7 Q You are now all in the car at the time of
8 the introduction?

9 A Yes.

10 Q Were there any conversations at the time
11 Mr. Coco first entered the car?

12 A Yes, there were.

13 Mr. Coco told us that he was going to direct
14 us to a location on East 39th Street in Brooklyn, between
15 Avenue B and Foster, that he wanted us to meet his part-
16 ner, and Mr. Villano started the vehicle up and we
17 started driving in that direction.

18 As we were driving over there Mr. Coco explained
19 to us that he had quite a large deal in the offing and
20 he thought we all might make quite a bit of money on
21 it.

22 We arrived at this location --

23 Q Did he make any specific reference to this
24 deal?

25 A No, sir, he didn't at this time.

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Olsberg-direct

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Q Continue, please.

A We arrived at this location on east 39th Street. Mr. Villano double-parked the car because there were no parking spaces available and Mr. Coco exited the vehicle and he walked across the street to a residence. He went inside this residence and he came back out in a few minutes in the company of another individual. They approached the car and entered the car.

Mr. Coco was sitting in the back seat directly behind me. The other individual was sitting in the back seat directly behind Mr. Villano.

Mr. Coco introduced this individual to us as his partner, Joey.

Q Mr. Olsberg, I ask you to look around the courtroom today and see if you can identify that individual that was introduced to you as Joey?

A Joey is sitting there, with the red tie on and white shirt.

MR. EBERHARDT: Let the record indicate that Mr. Olsberg has indicated Joey to be Joseph Mauro, the defendant.

Q After the introductions were there further conversations?

A Yes, there were.

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Olsberg-direct

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1 Mr. Villano took a bill out of his pocket and
2 he presented it to Mr. Mauro and he asked Mr. Mauro if
3 there was anything he could do with this bill. At
4 this time Mr. Villano turned on the dome light in the
5 automobile so Mr. Mauro could see the bill.
6

7 Mr. Mauro examined this bill and asked Mr.
8 Villano how many of these bills were available. Mr.
9 Villano said he thought he could get as many as Mr.
10 Mauro may be able to use.

11 Q Let me interrupt you --

12 MR. ROSENBAUM: I think the answer should
13 be continued until it is finished. It is very
14 interesting.

15 THE COURT: Please.

16 MR. ROSENBAUM: I am sorry, your Honor.

17 THE COURT: If you have not finished your
18 answer, do so. If you have finished we will go on to
19 the next question.

20 A Mr. Mauro then asked Mr. Villano if he could
21 keep this bill and he would get back to Mr. Villano at
22 a later time through Mr. Coco and let him know what he
23 could do.

24 Q Mr. Olsberg, before we go any further, I will
25 ask you if you prepared any notes of your own accord

1 rka9 Olsberg-direct
2 that might refresh your recollection of the testimony
3 you have just begun to give?

4 A Yes, I have prepared some notes myself of
5 my recollections of what transpired on those particular
6 dates.

7 Q Do you have them with you?

8 A I certainly do.

9 Q May we have them, please?

10 A Yes.

11 MR. EBERHARDT: I would like these marked
12 as Government's Exhibit 7.

13 (Government's Exhibit 7 was marked for iden-
14 tification.)

xx 15 BY MR. EBERHARDT:

16 Q You stated those notes were prepared from
17 your own recollection of the events that occurred?

18 A Yes, sir.

19 Q Did anybody tell you what to write in those
20 notes?

21 A Absolutely not.

22 THE COURT: When did you prepare them?

23 THE WITNESS: Over the last two days.

24 Q Let me return to the conversation of February
25 13th. You just testified about some discussion with

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Olsberg-direct

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respect to a counterfeit bill.

Was there further discussion?

A Yes, there was.

Q By whom and who said what?

A After they had this conversation concerning the counterfeit bill, Mr. Coco handed some stock certificates to Mr. Villano and he told Mr. Villano that the stock certificates were worth only about \$300 and he couldn't do anything with them, and Mr. Villano said that he would be willing to accept \$300 for them at this point, and Mr. Coco said, well, there were bigger things to talk about and that Mr. Villano had a chance to make a much larger amount of money, and Mr. Coco went on to explain then at that point that him and his partner and a third party, who he referred to as his boss, were in possession of some stolen cashier's checks on the First National City Bank and that these checks were all made out in the amount -- in an amount over \$2 million and that he wanted it understood that if we did come to an agreement on these checks, that him and his partner, Mr. Mauro, were requested that they get 2-1/2 points of any dollars realized from the sale or cashing of these checks.

At this point Mr. Mauro spoke up and asked

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Olsberg-direct

me what I thought I could get in total dollar amount from these checks, and I advised Mr. Mauro I couldn't answer that question because, No. 1, I did not see the checks, I did not know the specific amounts and I would not talk to anybody about them because I had no information at this time.

Mr. Coco then stated to me that, again, the checks were for over \$2 million each, and he also told me that one check was already working that had been put through Canada and was presently in Geneva, Switzerland being worked. That was his terminology. And that another check had been given to another party, and he did not identify the party but he said that this check was badly marked up and couldn't be used and therefore he had three checks left that something could be done with. And at that point Mr. Mauro asked me again if I understood their version of the point system and I explained to him that I thought I did: he was asking 2-1/2 points, which represented 2-1/2 per cent of any proceeds that would be gained from the sale or cashing of these checks and 23 per cent for their boss.

Mr. Coco told me again that the forgeries were perfect, that the checks were for well over \$2 million

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Olsberg-direct

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and that he would obtain a photostatic copy of these checks for me and give them to me at a later date.

At this time Mr. Mauro asked me when him and Mr. Coco would realize the dollar from the sale or cashing of these checks, and I explained to him I couldn't answer that question because I did not have the checks and I had not talked to anybody.

At this time Mr. Coco suggested another meeting and a meeting was suggested for February 16th, I believe, at 9 o'clock in the evening, and we discussed the location for the meeting and it was decided we should meet at Paxton's Chop House and Restaurant at Second Avenue, Manhattan.

Q With respect to that arrangement was that arrangement finalized? Did you in fact have a meeting there?

A Yes, we did. We in fact had a meeting in Paxton's Restaurant.

Q On what date?

A February 16, 1973.

Q Approximately what time?

A Approximately 9:40 p.m.

Mr. Coco had set the meeting for 9 o'clock. He arrived at Paxton's Restaurant approximately 9:30 p.m.

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Olsberg-direct

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in the company of another individual who he introduced as Mario.

Q Mario is not in fact Joseph Mauro?

A No, Mario was not Joseph Mauro.

Q Did you enter into discussions at this time?

A Yes, I did.

Q Will you please tell us to the best of your recollection what was said and the identity of the speaking individual?

A Mr. Coco did the speaking and brought up the subject of these cashier checks on First National City Bank and the fact they were stolen and the matter had to be handled in a very discreet way, and he said he had to discuss this matter again with his partner, Mr. Mauro --

MR. ROSENBAUM: I object as it being hearsay.

MR. EBERHARDT: It is comment --

THE COURT: Please.

Let me hear the testimony and I will rule .

(Answer read.)

MR. ROSENBAUM: I withdraw my objection.

I thought I heard something else.

Q Would you please continue with respect to any

1 rka14 Olsberg-direct
2 further conversations if there were any?

3 A Yes.

4 He said they had discussed the split of
5 the proceeds again --

6 MR. ROSENBAUM: That I will object to.

7 THE COURT: You are indicating at this
8 February 16th meeting, Mr. Coco was speaking?

9 THE WITNESS: To me.

10 THE COURT: Are you now stating to the
11 jury the substance of what he was saying to you?

12 THE WITNESS: I am stating to the jury what
13 Mr. Coco said to me personally.

14 THE COURT: Overruled.

15 BY MR. EBERHARDT:

16 Q Please continue.

17 A Mr. Coco told me that he and Mr. Mauro had
18 discussed a split of the proceeds again and they were
19 concerned that I understood what the split would be and
20 he went over the split again with me saying that he and
21 Mr. Mauro were to receive 2-1/2 per cent of the
22 proceeds and their boss was to receive 23 per cent of
23 the proceeds, and I said that I understood this perfectly,
24 at which time Mr. Coco reached in the jacket of his
25 pocket and produced a piece of paper and handed it to

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Olsberg-direct

me. I opened the piece of paper up at the table. It was dark in the restaurant and Mr. Coco told me that this was a photostatic copy of a cashier's check on First National City Bank. I asked Mr. Coco if he minded if I went up to the men's washroom to look at it. He had no objection.

I went to the men's washroom and looked at it in the light: the photostatic copy of a check on the First National City Bank in the amount of \$2.76 million, and the name of the payee was Clark Gorman.

I returned to the table and I told Mr. Coco that the photostat looked all right but I couldn't do anything with a photostatic check, that I had to have original checks if there was a deal to be made.

Mr. Coco then told me that him and his partner, Mr. Maru, were responsible to their boss for these checks, that some sort of substantial amount of cash would have to be put up before these checks could be turned over to me and Mr. Villano, and myself and Mr. Coco discussed various amounts and we finally arrived at a figure of \$25,000 and I asked Mr. Coco specifically why they wanted this money put up, and he again reiterated to me that him and his partner were responsible to their boss and that if they gave me these checks and I

rk16 Olsberg-direct

was not able to cash them and not able to return them, that they would have some compensation for their efforts in the matter.

\$25,000 was agreed on, and I believe that basically ended the meeting and Mr. Coco suggested another meeting on February 20th at the same restaurant, Paxton's Restaurant, at 9 o'clock.

Q With respect to this \$25,000, what specifically was to be done with the \$25,000? Was that discussed?

A Yes, the \$25,000 was an amount of cash that they requested that I put up with them.

Q With whom was it to be placed?

A This particular phase of the conversation, there was no discussion at that point as to who that cash would be placed with. He left it up in the air at this point.

Q You stated that Mr. Coco indicated a further meeting would be necessary on February 20th.

A Yes, sir.

Q Was there another meeting on February 20th?

A Mr. Villano and I arrived at Paxton's Restaurant on the evening of February 20, 1973, at approximately 8:50 p.m. and we were in this restaurant until 10:50 p.m. Nobody showed up and we left.

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Olsberg-direct

Q Did there come a time when you had another meeting with Mr. Coco?

A Yes, February 27, 1973.

Q Where?

A Paxton's Restaurant.

Q Approximately what time?

A Approximately 10:05 p.m.

Q Who else was present?

A Mr. Coco arrived at the restaurant at 10:05 p.m. with an individual he introduced as his boss, Bruce. Bruce was asked what his last name was and he replied Romanoff.

Q Did you enter into discussions with Mr. Coco and Mr. Romanoff?

A At that time Mr. Villano and I had just finished eating and Mr. Romanoff and Mr. Coco said they would like to have dinner so they ordered dinner, which took up the better part of an hour.

Q After dinner did you have a further discussion?

A After dinner Mr. Coco asked Mr. Villano if he would like to step to the bar with him and let Mr. Romanoff and myself discuss the matter of the checks.

Q Did you have any discussion with Mr. Coco

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Olsberg-direct

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at that time with respect to the checks?

A No, sir.

Q I turn you now to your conversation with Mr. Romanoff at that time. What did you say to Mr. Romanoff, what did Romanoff say to you?

A Mr. Romanoff asked me if I had been made aware of what the situation was, and I said yes, but I would rather he filled me in on the situation since they said he was the boss.

He told me they had possession of some stolen cashier's checks from First National City Bank in New York and that these checks were for well over \$2 million, and he wanted to know what, if anything, I could do to sell these checks or cash them, and we discussed this in some detail and I told Mr. Romanoff there was nothing I could do at this time because I didn't have the checks in my possession.

Q What did he do?

A Mr. Romanoff then handed me three photostatic copies of three cashier's checks drawn on First National City Bank, New York. One of these photostatic copies was the same as one I had viewed that had been given to me by Mr. Coco on February 16th, made out to Clark Gorman in the amount of 2 million six hundred some

1 rka19 Olsberg-direct

2 odd thousand dollars.

3 Q Was there a further discussion?

4 A Yes, there was.

5 At this time Mr. Coco and Mr. Villano returned
6 from the car. Mr. Coco asked Mr. Romanoff how things
7 were going and Mr. Romanoff told him, "So far so good."

8 Then Mr. Romanoff asked Mr. Coco if Mr.
9 Coco had explained to Mr. Villano and myself the cut of
10 the proceeds if a deal were to be concluded.

11 Mr. Coco told Mr. Romanoff he had explained
12 the situation to me on two different occasions and
13 two different meetings and that he felt that I understood,
14 but he reiterated it again for Mr. Romanoff's edifica-
15 tion.

16 He explained to Mr. Romanoff that he was
17 getting 23 per cent and that Mr. Mauro and himself
18 were getting 2-1/2 per cent of the proceeds.

19 Then Mr. Romanoff said to me that he under-
20 stood there was a discussion between Mr. Coco and myself
21 in regards to putting up a substantial amount of money
22 then, and I said yes, and that Mr. Coco and Mr. Villano
23 had discussed that and we agreed on \$250,000. And Mr.
24 Romanoff said he didn't feel that \$25,000 was enough
25 and he thought the figure should be \$50,000.

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Olsberg-direct

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1 I told Mr. Romanoff there was only \$25,000
2 available and that is all that would be put up, and
3 if this was not acceptable to him the deal was off.

4 He finally agreed to accept this amount.
5 Then he wanted to discuss how it would be done, and it
6 was suggested that the money be placed in a safe-deposit
7 box in a bank in Brooklyn, close to Mr. Romanoff's office,
8 and Mr. Romanoff said, "Whose name would te money be
9 in?" and I said, "Necessarily it would have to have
10 two signatures, either Mr. Villano and myself or your
11 signature." And he then discussed with Mr. Coco
12 whose signature would go on the safety-deposit box,
13 either Mr. Coco's or Mr. Mauro's or himself, and Mr.
14 Coco told Mr. Romanoff that he preferred he and Mr.
15 Olsberg sign on the safety-deposit box, and this was
16 agreed on and the figure of \$25,000 was agreed on, and
17 at this time Mr. Romanoff asked Mr. Coco if he would like
18 to go back to the bar with Mr. Villano, that he had some
19 things he wanted to discuss with me in private.

20 Mr. Coco and Mr. Villano went back to the bar
21 and Mr. Romanoff asked me in what manner I could
22 dispose of these checks, who my contacts were and how
23 I would go about obtaining cash for these.

24 I told Mr. Romanoff that I could not give him
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Olsberg-direct

any names because we so far had no deal, I had not seen the checks and I had a book in my possession showing three or four names of some international banks in Zurich, Switzerland and I asked Mr. Romanoff if he had any dealings with any of these banks.

Before he said no, that he had a check presently working over in Geneva, Switzerland, and he said there was one more point which he wanted to clarify with me before we get on with the deal, and I told him what that was. He said I would have to get someone to vouch for me before he would turn the checks over to me.

I explained to Mr. Romanoff that I would not get anyone to vouch for me for two reasons. No. 1, it was a very risky business and I didn't see the necessity of bringing in a third party and making them privy to what was going on, and, No. 2, if I had to have someone vouch for me, that I would have to split the proceeds of what Mr. Villano and I got with that person, and because of the large risk involved I would not ask anyone to vouch for me.

At this time Mr. Coco and Mr. Villano returned from the bar and Mr. Romanoff handed a set of keys to Mr. Coco and told Mr. Coco to go to his car and get

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Olsberg-direct

2 his briefcase out of the truck of his car, Mr. Romanoff's
3 car.

4 Mr. Coco departed the restaurant and was gone
5 for several minutes, and he returned in several minutes
6 carrying a briefcase which he handed to Mr. Romanoff.
7 Mr. Coco then said to Mr. Villano, "Let's you and I go
8 back to the bar.

9 Mr. Villano and Mr. Coco went to the bar.
10 Mr. Romanoff opened up his briefcase and handed me three
11 original cashier checks on the First National City Bank.

12 I examined these checks. They amounted to
13 \$8.410 million. I then gave the original checks and
14 the photostatic copies back to Mr. Romanoff.

15 Q Mr. Olsberg, I ask you to examine the
16 documents in front of you. Will you tell us if those
17 are the checks that Mr. Romanoff handed to you on February
18 27th at Paxton's Restaurant?

19 A Yes, sir, they are.

20 MR. EBERHARDT: Let the record reflect Mr.
21 Olsberg is examining Government's Exhibits 2, 3 and 4.
22 in evidence.

23 Q Mr. Olsberg, you state you examined those
24 checks. What did you do with the checks?

25 A I handed the checks back to Mr. Romanoff, the

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Olsberg-cross

1 A February 9th I met Mr. Villano at 201
2 East 69th Street.

3 Q And you spoke with him?

4 A Yes, sir.

5 Q What was the gist of that conversation?

6 A The gist of that conversation was that it was
7 decided that I would accompany Mr. Villano to Brooklyn.

8 Q On February 9th?

9 A Yes.

10 Q And you went with him on February 9th to
11 Brooklyn?

12 A Yes.

13 Q Where did you go on February 9th?

14 A I went to 2011 Nostrand Avenue in Brooklyn.

15 Q Did you go there directly from the FBI head-
16 quarters?

17 A No, sir.

18 Q Where did you go first?

19 A Went to an automobile renting agency.

20 Q And you rented a car?

21 A Yes, sir.

22 Q Then you went to 2011 Nostrand?

23 A Yes, sir.

24 Q Did you go up to the apartment at 2011 Nostrand
25

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Olsberg-cross

2 Avenue?

3 A No, sir.

4 Q Did you make any stops between the time you
5 rented the car and the time you got to 2011?

6 A No, sir.

7 Q Were you with Mr. Villano on February 9th?

8 A I was, sir.

9 Q Did Mr. Villano go into the building at 2011?

10 A 2011 Nostrand Avenue is a social club.

11 Q Did Mr. Villano go into the club?

12 A Yes, sir.

13 Q You did not go into the club?

14 A No, sir, I remained in the automobile.

15 Q How long did Mr. Villano remain in the club?

16 A Approximately 10 minutes.

17 Q Do you know if Mr. Villano spoke with anyone
18 in that club? Yes or no.

19 A Yes.

20 THE COURT: Your own knowledge?

21 THE WITNESS: After he returned from the
22 club I have knowledge that he spoke to somebody.

23 THE COURT: Did you observe him speaking
24 with anyone?

25 THE WITNESS: No, I did not.

1 rka54 Olsberg-cross

2 checks were presented to us.

3 Q Did you discuss anything about counterfeit
4 10s?

5 A Yes.

6 Q What made you discuss something about counter-
7 feit 10s?

8 A Mr. Villano is an undercover agent with the
9 FBI, was so employed at that time, and he thought it would
10 be a good idea to talk with the subjects concerning
11 some counterfeit bills. This was his idea and I have
12 no knowledge other than that as to why he wanted to
13 do it.

14 Q So it was Mr. Villano's suggestion that the
15 conversation of counterfeit 10s be brought up?

16 A That he bring it up, yes.

17 Q Going back to your 14 months ago, you said
18 you got a phone call from somebody with reference to this
19 case, for an investigation of this case?

20 A No, sir.

21 Q Who called you 15 months ago?

22 A I didn't say I received a phone call. I
23 said a friend talked to me.

24 Q A friend talked to you?

25 A Yes.

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Olsberg-cross

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A Yes, sir.

Q Was anything said by Mr. Mauro at that time with reference to the teller's or cashier's checks?

A No, sir, not at that time. There was no discussion by Mr. Mauro of cashier's checks at the time of the conversation about the counterfeit \$10 took place.

Q And that was the first conversation that took place when Mr. Mauro came into the car?

A Yes, sir.

Q What happened with reference to the cashier's check?

A After Mr. Coco returned the stock certificates to Mr. Villano.

Q In other words, Mr. Mauro had a counterfeit \$10 bill in his possession. Mr. Coco had returned the stock certificates to Mr. Villano and then the discussion came out about the cashier or teller's checks?

A Yes.

Q Who initiated that conversation with reference to the cashier's checks?

A Mr. Coco.

Q What did Mr. Coco say?

A Mr. Coco said he had stolen cashier's checks

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Olsberg-cross

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on the First National City Bank in New York in the amount of \$2 million or more on each check and had partners, one was Mr. Mauro, and he had a boss, and that one of these checks presently had been put through Canada and was presently in Geneva, Switzerland.

One check was out with another individual that was unnamed and there were three checks left that he could work with.

Q Did Mr. Mauro say anything to you with reference to the \$2-1/2 million check?

A Yes, sir.

Q What did he say?

A Mr. Mauro asked me how much I could obtain against the checks.

Q Did he ask you, with reference to any of the other checks that were stolen, whether or not you could dispose of them?

A He was speaking to me in reference to the three remaining checks that were over \$2 million apiece when asked me the question of how much he thought I could get in total if I were to sell or cash those checks.

Q How long did he discuss these checks with you?

1 rka67 Olsberg-cross

2 A He discussed these checks on three different
3 occasions in the car that evening.

4 Q Do you remember testifying before the grand
5 jury on April 28, 1973 in this court?

6 A Yes, I do.

7 Q Do you recall whether or not you ever mentioned
8 in your testimony before the grand jury the name of
9 Joseph Mauro as being part of any of these conversations?

10 A I believe to the best of my knowledge that
11 his name came up and I was asked a question about him.

12 Q I have in front of me a copy of the grand
13 jury minutes, so let's explore it for a moment.

14 Apparently these questions are asked of you
15 by Mr. Eberhardt?

16 A Yes, sir.

17 Q "Q Please state your name.

18 "A Herbert Olsberg.

19 "Q Mr. Olsberg, on approximately February
20 13, 1973 did you meet an individual named Patty Coco?

21 "A Yes, I did.

22 "Q Did you meet him at 2011 Nostrand Avenue
23 in Brooklyn?

24 "A Yes, I did. After meeting Mr. Coco
25 did you thereupon depart to 39th Street, Foster and

1 rka68 Olsberg-cross

2 Avenue D in Brooklyn?

3 "A Yes, I did.

4 "Q Did Patty Coco introduce you to an in-
5 dividual named Joey?

6 "A Yes, he did.

7 "Q Thereupon, did you enter into discus-
8 sion with Mr. Coco regarding a \$2-1/2 million check that
9 had been deposited in Switzerland and which was cur-
10 rently drawn upon?

11 "A Yes."

12 Do you remember answering that question?

13 A I remember answering it.

14 Q "Q Did Mr. Coco then indicate to you that
15 he had three stolen cashier checks which he could offer
16 to you?

17 "A Yes.

18 "Q Did he indicate to you that his end
19 of the deal would be 2-1/2 points?

20 "A Yes, he did."

21 A Yes, sir.

22 Q "Q When Mr. Coco approached you with this
23 offer was it your understanding that he was offering
24 you these for sale because you had contacts in Europe?

25 "A Yes."

1 rka69

Olsberg-cross

2 A Yes, sir.

3 Q "Q And these contacts were contacts which
4 would enable you to negotiate the checks in Europe,
5 is that correct?

6 "A Yes.

7 "Q Did Coco indicate to you in fact that
8 he knew these checks were stolen checks?

9 "A Yes.

10 "Q They were stolen from the First National
11 City Bank in New York, is that not so?

12 "A First National City Bank.

13 "Q And that these were cashier checks?

14 "A Yes.

15 "Q Did Mr. Coco explain to you that one
16 stolen check had already been placed in a Swiss account?

17 "A Yes, he did" --

18 MR. EBERHARDT: I will object to the inflec-
19 tions that Mr. Rosenbaum is giving to some of these
20 words. It is fine if he reads the transcript as it
21 appears.

22 THE COURT: Yes, Mr. Rosenbaum, the Court
23 has observed this and I think it would be better to let
24 the jury draw their own conclusions rather than you
25 dramatize the part.

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Olsberg-cross

MR. ROSENBAUM: I am sorry.

BY MR. ROSENBAUM:

Q "Q Did Coco indicate to you that these cashier checks contained forged signatures upon them?

"A Yes, he did.

"Q Did you ask Mr. Coco if you could examine the checks?

"A I did.

"Q What did Mr. Coco tell you?

"A He would show me some photostats and then had me meet his boss and showed me the original cashier checks that were stolen.

"A On February 16, 1973, again did you meet with Patty Coco?"

MR. EBERHARDT: I will object to the continuance of reading the transcript unless it can be shown there is some materiality to this transcript.

THE COURT: Let him continue. As I remember the meeting of February 16th --

MR. ROSENBAUM: That is about the last question.

THE COURT: All right, fine.

Q Mr. Olsberg, at no time did you mention, in your examination before the grand jury, that Mr. Mauro

1 rkal Olsberg-cross
2 had made any statements, is that correct?

3 MR. EBERHARDT: Can I have an indication
4 as to examination on what date before the grand jury?

5 MR. ROSENBAUM: On February 26, 1973.

6 THE COURT: Let's have the question read
7 back to the witness so he can comprehend the question
8 in its full form.

9 In fact, I think it might be better if you
10 restated the question.

11 BY MR. ROSENBAUM:

12 Q On April 26, 1973, in your testimony before
13 the grand jury, you did not mention any conversation that
14 Mr. Mauro had with you or in your presence, is that
15 correct?

16 A Yes, sir.

17 Q And you appeared again before the grand jury
18 on May 1, 1973?

19 A Yes, sir.

20 Q And a perusal by me of the examination
21 of which I have a copy that was supplied by Mr. Eberhardt, Mr.
22 Mauro's name again is not mentioned by you, is that cor-
23 rect?

24 MR. EBERHARDT: On what date?

25 MR. ROSENBAUM: May 1, 1973.

rka72

Olsberg-cross

1 Your Honor, to my understanding there are
2
3 only two times the witness appeared before the grand jury,
4 at least the only two records submitted to me.

5 MR. EBERHARDT: That is right.

6 I was wondering, perhaps counsel doesn't have
7 a complete record.

8 THE COURT: How many pages do you have in
9 front of you, Mr. Rosenbaum?

10 MR. ROSENBAUM: May 1st, five pages.

11 MR. EBERHARDT: That is correct, your
12 Honor.

13 THE COURT: Would you restate your question,
14 Mr. Rosenbaum.

15 MR. ROSENBAUM: Would you read back the
16 question.

17 (Question read.)

18 MR. EBERHARDT: Objection as to form.

19 THE COURT: Sustained.

20 BY MR. ROSENBAUM:

21 Q You on your testimony stated today that a safe-
22 deposit vault would be opened up for certain cash,
23 is that right?

24 A Yes.

25 Q And it would either be 25 or 50 thousand dol-

1 rka73

Olsberg-cross

2 lars in cash?

3 A Yes, sir.

4 Q And that there would be the names of your-
5 self, Mr. Mauro or Mr. Coco, Mr. Romanoff as people
6 that could have access to that box?

7 A Or Mr. Villano.

8 Q On April 26th, before the grand jury, this
9 question was asked of you:

10 "Q I show you" --

11 MR. EBERHARDT: Objection as to form. He
12 can ask the witness if he recalls.

13 MR. ROSENBAUM: You asked this question.

14 Q "Q I show you Grand Jury Exhibit 1 and ask
15 you if those are three photostatic copies of the checks
16 that were shown to you -- withdraw that question.

17 "After Mr. Romanoff showed you the three
18 photostatic copies of the stolen cashier checks, did you
19 then request of him to see the originals of these
20 checks?

21 "A I did.

22 "Q At approximately the same time did you
23 again enter into a discussion regarding the deposit of
24 \$25,000 into a safety-deposit box?

25 "A I did.

rka74

Olsberg-cross

1 rka74 Olsberg-cross
2 "Q What was the agreement that was reached
3 as to the \$25,000?

4 "A Mr. Romanoff wanted it to be \$50,000
5 and we discussed the matter and finally agreed on
6 \$25,000 to be put into the safe-deposit box in Mr. Romanoff's
7 name and mine."

8 Do you remember testifying to that?

9 A I absolutely do, sir.

10 Q Is it your testimony that that is not correct?

11 A No, that testimony is correct as is the pre-
12 vious testimony I gave because that is a final conclu-
13 sion, that was the final answer that Mr. Romanoff agreed
14 to after discussing Mr. Mauro's name and Mr. Coco's name
15 on February 27, 1973.

16 Q Were you questioned at the grand jury about
17 the previous arrangement with reference to the safe-
18 deposit box?

19 MR. EBERHARDT: Objection, unless the wit-
20 ness is allowed to refresh his recollection as to what
21 he testified to either by exhibiting the grand jury
22 testimony or having the whole thing read to him.

23 THE COURT: He hasn't indicated he requires
24 his recollection refreshed. If he does, that certainly
25 would be proper but at the moment I haven't heard the

rka75

Olsberg-cross

witness say he needs to have his recollection refreshed in any way.

THE WITNESS: Could I have the question again?

THE COURT: Mr. Kaufman.

(Question read.)

A Yes. I answered that I was. That was a final statement because in the middle of that meeting when the question of 25,000 or 50,000 came up and a discussion was held as to whose name would be on that safety-deposit box, either Mr. Villano or myself on our side, Mr. Coco, Mr. Mauro, Mr. Romanoff, and I stated here today that Mr. Coco suggested to Mr. Romanoff that his name be on that safety-deposit box. Therefore I related that before the grand jury.

Q Then the testimony which I read would have been the second question with reference -- as to a final arrangement with reference to a safety-deposit box?

A I don't understand you.

Q The questions I read from with reference to the name of Mr. Romanoff and your name to be on the safety-deposit box, that was a subsequent agreement; there was a prior temporary arrangement made, is that correct?

rka76

Olsberg-cross

1 A No. That agreement was made on February
2
3 27, 1973 in Paxton's Restaurant and I had just reiterated
4 to you the circumstances of Mr. Romanoff's name being
5 requested to be on that safety-deposit box.

6 Q Before that arrangement was made were there
7 other proposals made with reference to names on safe-
8 deposit boxes?

9 A Yes, sir, there was.

10 Q How many proposals were there?

11 A There were several proposals.

12 Q Let me read to you from page 5 of the grand
13 jury minutes of April 26, 1973:

14 "Q Did you and Mr. Coco thereupon enter
15 into a discussion about a proposed agreement whereby
16 \$25,000 would be placed in a cash account in your name
17 and in Mr. Coco's name?

18 "A Yes, I did. It would be placed in
19 a safety-deposit box."

20 Mr. Mauro was not part of that arrangement
21 either, is that correct?

22 A Yes, he was part of that arrangement in the
23 original discussion. I was not asked if Mr. Mauro --
24 I was not asked in the grand jury if Mr. Mauro's name
25 came up and you must understand I was only answering

rka77

Olsberg-cross

1
2 to the questions asked of me. It was not my part to
3 volunteer.

4 Q How long did Mr. Mauro remain in the car after
5 he examined the counterfeit 10?

6 A I would say approximately 25 minutes. I
7 couldn't pinpoint it to a minute, sir.

8 Q How long was his total time spent in that
9 car?

10 A I would say approximately 25 minutes that he
11 spent in the automobile.

12 Q After Mr. Mauro left the automobile that day
13 or that evening, did you ever see him again?

14 A No, sir.

15 Q Did you ever telephone him or did he ever tele-
16 phone you or speak to you?

17 A No, sir.

18 Q Did you ever speak with him down at Paxton's
19 Restaurant? Was he ever down at Paxton's?

20 A Not to my knowledge, no, sir.

21 Q The name Mario, could you describe what Mario
22 looks like?

23 A Mario is a white male, approximately five
24 foot seven. I would say he weighed close to 180
25 pounds and he had a beard and he was wearing a leather

1 rka78

olsberg-cross

2 coat that night.

3 Q Do you know what Mr. Mauro was wearing the
4 night of February 13th?

5 A Do I know what?

6 Q What Mr. Mauro was wearing that evening?

7 A Yes, sir. He was wearing a sweater and a
8 pair of slacks.

9 Q Do you know what Mr. Villano was wearing on
10 February 9th at the bar?

11 A I know what he was wearing in the car on the
12 way to the bar, yes, sir. He was wearing a white
13 leather jacket on February 9th.

14 Q When there was a discussion about the counter-
15 feit \$10 bills, that is, in the car, what was your atti-
16 tude about that discussion?

17 A My attitude about that discussion was that
18 it should not have taken place.

19 Q Did you start to yell and scream about it?

20 A I certainly did.

21 Q Did you discuss this case with Mr. Villano?

22 A Did I discuss what?

23 Q This case with Mr. Villano.

24 A When are you talking about?

25 Q Did you discuss your testimony, the testimony

1 rka80

Olsberg-cross

2 week prior to February 9th. Approximately February
3 4th until the present time, right now.

4 Q How many hours did you put into this?

5 A I have no way of estimating the hours, sir.
6 They were considerable.

7 Q Pardon me?

8 A They were considerable.

9 Q They were considerable?

10 A Yes, sir.

11 Q Was it more than a week's work, more than 40
12 hours of work?

13 A Yes, sir.

14 Q About how much would be involved?

15 MR. EBERHARDT: The witness has already
16 answered the question.

17 THE COURT: Let's see if the witness can
18 do anything more. I will permit the question.

19 A Well, after my original meeting on this thing
20 I have had other conversations with FBI agents before
21 and after the checks were recovered, questions that they
22 asked me.

23 Q Is your sole source of income now from the
24 United States Government?

25 A Yes, sir, it is.

rka81

Olsberg-cross-redirect

Q Are you being paid for your testimony today?

A I am receiving -- I don't know what you mean by that. I am receiving subsistence, living subsistence, on a monthly basis.

Q Is that as a result of undercover work you have done or for other reasons?

A Undercover work I have done, yes, sir.

MR. ROSENBAUM: No further questions of this witness.

REDIRECT EXAMINATION

BY MR. EBERHARDT:

Q Mr. Olsberg, do you remember appearing before the grand jury on May 1, 1973, of this year?

A Yes.

Q Do you recall being asked these questions and giving these answers:

"Q And I direct your attention back to the meeting of February 13, 1973, a meeting which you had on prior occasion testified to, and ask you if you remember meeting with Patty Coco on February 13th and being introduced to an individual named Joe?

"A I was.

"Q Did he indicate his last name at that time?

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Olsberg-redirect

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"A Mauro, I believe.

"Q Did Mr. Coco introduce you to Mr.

Mauro?

"A Yes, he did.

"Q Did Mr. Coco represent to you that Mr.

Mauro was in fact his partner in this stolen cashier
check scheme?

"A Yes, he did. He indicated this by
what he requested if I were to buy the checks.

"Q What did they request?

"A They requested 2-1/2 points for the
total amount of money obtained on the checks that I would
supposedly obtain. 2-1/2 points represented 2-1/2
per cent interest"?

Do you recall being asked those questions
and giving those answers?

A Yes, I do.

MR. EBERHARDT: No further questions.

RECROSS EXAMINATION

BY MR. ROSENBAUM:

Q Between April 17th and May 17th, the two times
you appeared before the grand jury, did you speak with
Mr. Eberhardt before your testimony before the grand
jury?

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Olsberg-recross

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A Yes, I did speak.

Q Did you speak to him between April 26th and May 1st?

A I couldn't tell you the exact date. I appeared before the grand jury May 1st.

Q But you also appeared before the grand jury on April 26th and no mention was made of Mr. Mauro, is that correct, except for the one statement I read to you before, is that correct?

A You would have to read that statement, sir.

Q "Q Did Patty Coco introduce you to an individual named Joey?

"A Yes, he did."

That was on April 26th. There was no other mention of Mr. Mauro on April 26th, is that correct?

A No, sir.

Q That is not correct?

A It is correct.

Q Next time you appeared before the grand jury was on May 1st and then you started to mention Mr. Mauro's name, not what Mr. Mauro said but what Mr. Coco told you?

A You would have to read it.

Q "Q Did Mr. Coco introduce you to Mr. Mauro?

"A Yes, he did.

rka 84

Olsberg-recross

218

1 rka 84 Olsberg-recross 218
2 "Q Did Mr. Coco represent to you that
3 Mr. Mauro was in fact his partner in the stolen cashier
4 check scheme?

5 "A Yes, he indicated this by what they requested
6 if I were to buy the checks.

7 "Q What did they request?

8 "A They requested 2-1/2 points of the
9 total amount obtained on the checks that I would supposedly
10 obtain. 2-1/2 points represents 2-1/2 per cent
11 interest."

12 Before you gave that testimony and after April
13 26th did you discuss your further testimony with Mr.
14 Eberhardt before the grand jury?

15 A Yes, sir, I did.

16 Q Was that discussion with reference to Mr.
17 Mauro?

18 A Yes, sir.

19 Q Was that discussion to correct the testimony
20 of yourself or to add to the testimony of yourself of
21 April 26, 1973?

22 MR. EBERHARDT: Objection as to form.

23 THE COURT: Sustained as to form.

24 Q What was that discussion with reference to?

25 A I believe that the discussion originated with

1 rka91

2 F O R D W I L L I A M C O L E, called as a
3 witness by the government, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. EBERHARDT:

7 Q Mr. Cole, tell the jury what your occupation
8 is?

9 A Special agent with the Federal Bureau of
10 Investigation.

11 Q How long have you been with them?

12 A Three years.

13 Q Where are you stationed?

14 A Inthe New York office.

15 Q How long in the New York office?

16 A A little over a year.

17 Q Were you involved as an FBI agent in an investi-
18 gation dealing with some stolen cashier checks from the
19 First National City Bank?

20 A I was.

21 Q I direct your attention to the evening of
22 February 27, 1973 and the early morning of February 28, 1973.
23 Can you please tell us if you were acting in your capacity
24 as an FBI agent?

25 A I was.

1 rka92

Cole-direct

2 A I was.

3 Q Can you tell us essentially what you were
4 involved in at that point?

5 A I was involved in covering a meeting between
6 Mr. Olsberg and Mr. Romanoff and participated in the
7 arrest of Mr. Romanoff.

8 Q Would you tell us essentially what happened
9 at the time of the arrest to Mr. Romanoff?

10 A I had been in a vehicle outside . On a
11 given signal I came in. I went up to the table,
12 assisted in the arrest of Mr. Romanoff and took three
13 checks from Mr. Romanoff. I seized them as evidence.

14 Q With respect to the seizure of those checks did
15 you subsequently file a report with the FBI?

16 A I did.

17 MR. EBERHARDT: Can I have this marked for
18 identification.

19 (Government's Exhibit B was marked for
20 tification.)

21 Q Mr. Cole, is that part of the report which re-
22 flects the seizure of the checks?

23 A Yes, it is.

24 Q I call your attention to Government Exhibits
25 No. 2, 3, 4 in evidence and ask you if those are the

rka93

Cole-direct

checks which you recovered some time early in the morning of February 28th?

A They are the same.

Q Exactly where were those checks when you seized them?

A They were sitting on the table directly in front of Mr. Romanoff. Mr. Romanoff's hands were on the table almost touching the checks.

Q You testified that you were involved in this investigation as an FBI agent, is that correct?

A I was.

Q Were you aware during this investigation that a monitoring device had been used?

A Yes, sir, I was.

Q What decision had the FBI made with respect to the use of this monitoring device?

MR. ROSENBAUM: Objection.

THE COURT: Sustained.

Q Mr. Cole, were you personally involved in the use of this monitoring device?

A I was.

Q To what extent were you involved?

A I was sitting in an FBI radio car around the corner from Paxton's public house --

1 rka94

Cole-direct

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MR. ROSENBAUM: Can we have the date?

3

THE COURT: Yes, I should like to know it

4

also.

5

Are you talking about --

6

THE WITNESS: The evening of the 27th.

7

THE COURT: The 27th of February, 1973?

8

THE WITNESS: Yes, your Honor.

9

A We were listening to the conversation in

10

Paxton's Public House as it was transmitted by the device

11

through the FBI radio in the car.

12

Q What was the purpose of this monitoring?

13

A For Mr. Olsberg's protection, in that he was

14

dealing with individuals whom we felt could be dangerous

15

to him.

16

Q Were any tapes made of that conversation on

17

February 27th and 28th?

18

A No, sir.

19

Q You were only listening to those conversations

20

for purposes of protection?

21

A Yes, sir.

22

Q Are you aware that the FBI made any tapes of

23

any conversations with respect to this investigation?

24

A No, sir, they made no tapes that I know of.

25

MR. EBERHARDT: Thank you very much. No

rkal02

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2 Your Honor indicated you would accept those
3 documents subject to connection. The government contends
4 it has connected those checks and your Honor reserved
5 the viewing of those documents from the jury and the
6 government would contend at the close of their case
7 that the jurors be allowed to inspect the four checks
8 in question.

9 THE COURT: Let me hear from Mr. Rosenbaum
10 on that.

11 MR. ROSENBAUM: I don't think there is
12 any testimony here with reference to Mr. Mauro and these
13 four checks. They were in Mr. Romanoff's possession.
14 They were allegedly checks taken or missing from the
15 bank. To actually connect them to Mr. Mauro where
16 there is absolutely no testimony with respect to his
17 connection, I object to their being admitted.

18 THE COURT: I rule the government has suffi-
19 ciently connected them up to permit them to be in
20 evidence for all purposes and to be shown to the jury
21 at such time as the government wishes to show the checks
22 to the jury.

23 Anything else?

24 (In open court.)

25 MR. EBERHARDT: The government calls as its

1 rk103

2 next witness John Dillon.

3 J O H N H. D I L L O N, J R., called as
4 a witness by the government, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. EBERHARDT:

8 Q Mr. Dillon, what is your occupation?

9 A I am a special agent for the FBI, attached
10 to the New York office.

11 Q How long have you been with the FBI?

12 A I have been with the Bureau about three and
13 a half years.

14 Q How long with the New York office.

15 A Just barely two years.

16 Q Prior to that what was your employment?

17 A Prior to being with the Bureau?

18 Q Yes.

19 MR. ROSENBAUM: I have to object. The
20 limited purpose that was agreed upon --

21 THE COURT: Yes.

22 MR. EBERHARDT: Withdrawn.

23 Q Mr. Dillon, are you the case agent of the
24 case involving an investigation of stolen cashier
25 checks?

1 rkal04 Dillon-direct

2 A Yes.

3 Q Will you explain to the jury what is detailed
4 by being a case agent?

5 MR. ROSENBAUM: Again I have to object to
6 this.

7 THE COURT: Yes. I don't think it is
8 necessary to go into this. Let's get to the point.

9 Q Mr. Dillon, as a case agent, are you aware
10 of the use by the FBI of a monitoring device in this case?

11 A That is correct, I am.

12 Q Are you aware of the circumstances in which
13 it was used in every instance in this case?

14 A That is correct.

15 Q Could you tell the jury whether or not any
16 tapes were made from that monitoring device?

17 A I can say absolutely that no tapes were
18 ever made in connection with this device?

19 Q Finally, could you tell us the purpose of that
20 monitoring device?

21 MR. ROSENBAUM: Objection.

22 THE COURT: Sustained.

23 MR. EBERHARDT: No further questions.
24
25

* * *

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1 rkal07

Dillon-cross

2 Q When you say reconstruct it, would this be
3 from your own memory you would reconstruct who the
4 other agents were?

5 A I could be possibly able to ascertain exactly
6 who was on station in that neighborhood at that time.

7 Q From where would you be able to reconstruct
8 this?

9 A It could be possible from locator cards at
10 the FBI office. I mean by locator cards cards that
11 show where an individual might be at a given time in order
12 to find him, another agent.

13 Q Were you alone that night or were you with
14 another agent?

15 A I was with another agent in my vehicle and there
16 was one other vehicle in the neighborhood, FBI vehicle
17 monitoring.

18 Q You said before there were quite a few
19 vehicles?

20 A At the various meets.

21 Q At the various what?

22 A Various meets. Over the course of the month
23 there were many people involved.

24 Q Let's limit it to February 13th. Was your
25 vehicle and another vehicle monitoring these conversa-

1 rka 108

Dillon-cross

2 tions?

3 A Yes.

4 Q And you don't know who the other vehicle --
5 what people were in it?

6 A I couldn't tell you.

7 Q And your vehicle, you know who your co-agent
8 was?

9 A To the best of my recollection, I do recall.

10 Q What is the best of your recollection?

11 A An agent named Watt.

12 Q Is he with your bureau any longer?

13 A Yes.

14 Q With your department?

15 A Yes, currently in New York.

16 Q Were you able to hear everything that was
17 said on that monitoring device?

18 A Not everything, but I would say by and large
19 the vast majority of the transmissions I could hear.

20 Q Did you assist Mr. Villano in setting up that
21 device?

22 A Only as a remote point, I ascertained that
23 I could receive the transmissions from this device.

24 Q You were sitting here when Mr. Villano testi-
25 fied, were you not?

rka 109

Dillon-cross

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A That is correct.

Q And he was asked I believe by me whether or not there was any electronic device set up in the car and he said he had none --

MR. EBERHARDT: I don't recall that as being the question. I recall the question being whether Mr. Villano had anything on his person with respect to that.

THE COURT: That is my recollection of the question as well.

Do you want to rephrase your question?

Q I believe I asked Mr. Villano did he know whether or not there were any bugs in the car and he answered that he had no knowledge but maybe Mr. Olsberg had one on him.

Do you remember hearing that testimony?

A I remember that.

Q And now you testify that Mr. Villano and you set up this instrument?

A My direct knowledge of that setting up of equipment is limited only to the transmission, test transmission that I received in my vehicle in that connection.

Q But you coordinated your testing with Mr.

rkall10

Dillon-cross

Villano?

A Presumably he was in the other vehicle with the monitoring device.

Q Would you say that he was aware of the monitoring device being in his vehicle?

A I would say in all probability. I can't speak for him. I would say in all probability he did.

Q He knew?

A Have some idea. There was a possibility, at least.

Q Mr. Dillon, in the ordinary course of your investigations are tapes sometimes made of these monitoring devices?

MR. EBERHARDT: Objection.

THE COURT: Sustained.

Q Besides Mr. Watt and yourself, there were two other agents monitoring this conversation?

A To the best of my recollection, though I can't state for a fact that they were in good reception of these transmissions at all times.

Q Were they assigned to hear these transmissions?

A We had two vehicles in the area specifically for the purpose of security in that connection.

Q Did you discuss with the other two agents what

rkall3

Dillon-cross

247

THE COURT: You may step down.

(Witness excused.)

MR. EBERHARDT: The final task that the government would undertake is to display the checks to the jury.

THE COURT: While the jury is looking at the checks I would suggest we step to the side bar for certain legal matters.

Subject to the jury examining the checks which you just handed to the deputy clerk, do you have anything else, Mr. Eberhardt?

MR. EBERHARDT: The government's direct case is finished.

THE COURT: The government rests?

MR. EBERHARDT: Yes.

(At the side bar.)

MR. ROSENBAUM: If I may address myself to count 2 of the indictment, there has been no testimony here that the defendant Mauro at any time had possession of, had custody of, touched, transmitted the alleged checks, the checks that were allegedly stolen, the cashier checks and except for the vaguest of testimony by Mr. Villano that he did not recall any precise statements, but the gist of the conversation was as to the disposition of these

1 rkall4

2 checks and by the fact that the grand jury minutes are so
3 inconsistent with the testimony I believe of the witness Mr.
4 Olsberg, I believe the government has failed to prove
5 a prima facie case with reference to count No. 2.

6 With reference to count No. 1, again there was
7 no testimony here to show that the defendant Mauro knew
8 or had knowledge that the checks were stolen or again that
9 he had any knowledge of their existence but only by the
10 vaguest of testimony and I respectfully move that the people
11 have failed to prove a prima facie case with respect to
12 count No. 1.

13 THE COURT: Let me hear from the govern-
14 ment relative to count No. 2 first where Mr. Rosenbaum
15 indicates the government has failed to establish that Mr.
16 Mauro at any time had in his possession any of the cashier
17 checks which are the subject of the indictment.

18 MR. EBERHARDT: Your Honor, the government's
19 theory with respect to this case is not that Mr. Mauro
20 ever possessed on February 27th those checks. The
21 government is relying on the theory of law which I am
22 sure your Honor is familiar with, the Pinkerton case and
23 a number of other cases. The proposition is that a
24 co-conspirator is liable for any other subsequent act
25 committed by a fellow co-conspirator in furtherance of the

1 rkall5
2 conspriacy.

3 The government contends there is direct
4 testimony linking Mr.Coco and Mr. Mauro in this conspiracy.
5 There is direct testimony linking Mr. Mauro and Mr.
6 Romanoff and there is direct testimony indicating that
7 Mr. Romanoff and Mr. Mauro possessed those checks in
8 count 2 of the indictment.

9 Based on those theories of law and facts
10 the government contends that count 2 should be submitted
11 to the jury.

12 THE COURT: How can you, Mr. Rosenbaum, dis-
13 tinguish Pinkerton against the United States from the case
14 at bar?

15 MR. ROSENBAUM: Off the record.

16 (Discussion off the record.)

17 MR. ROSENBAUM: Your Honor, with reference
18 to count 2, it does specify on or about February 27, 1973,
19 it refers to Coco, Mauro and Romanoff did unlawfully,
20 wilfully and knowingly possess, barter, sell and dispose
21 of the property.

22 Every bit of testimony as to February 27th on
23 the government's direct case, everyone says that
24 on February 27th at Paxton's Restaurant no one saw Mr.
25 Mauro, Mr. Mauro was not there. Mr. Mauro never

1 rkall6

2 touched those checks there and everyone says that the
3 only time they ever saw him was on that one date, February
4 13th, which is the subject matter, your Honor, of count
5 No. 1 which is incorporated into count No. 1; but count
6 No. 2, specifically the government has failed to estab-
7 lish any aspect of that allegation on February 27th.

8 MR. EBERHARDT: The government will respond
9 and say that defense counsel's response just immediately
10 given is not responsive to your Honor's question of
11 distinguishing this case from Pinkerton. The government
12 submits the Supreme Court decision of Pinkerton con-
13 trols whether it is a good law or not. A co-con-
14 spirator is criminally liable for any subsequent act by
15 a co-conspirator and the government's contention is tha
16 the facts showing the conspiracy and the people involved
17 in this case is sufficient to send this case on
18 count 2 plus count 1 to the jury.

19 MR. ROSENBAUM: There is no testimony here
20 that even again the remotest possibility indicates that
21 Mauro knew of the alleged meeting that took place in
22 Paxton's to set the wheels into motion or had anything to
23 do with that meeting on February 27th.

24 There is testimony that Coco made these arrange-
25 ments in the absence of Mauro; in fact, called up the

1 rkall7

2 agent and apologized to him when nobody was at the club,
3 at Paxton's on one occasion, and Mauro has nothing to do
4 with that aspect of February 27th.

5 THE COURT: Mr. Eberhardt, could you put your
6 finger on the government's proof that the defendant,
7 which I think is an element of count 2 -- that the de-
8 fendant knew that the checks had been stolen from a bank?

9 MR. EBERHARDT: Absolutely, your Honor.
10 The testimony in this case has shown, and both Mr. Villano
11 and Mr. Olsberg testified that Mr. Coco in the pre-
12 sence of Mr. Mauro indicated he knew the checks were
13 stolen from the First National City Bank and that they
14 were perfect forgeries.

15 THE COURT: I do remember there is testimony
16 in that regard now that you mention it.

17 Under the circumstances, and in view of the
18 holding in Pinkerton against United States the court
19 denies the motion to dismiss count 2 of the indict-
20 ment.

21 Do you want to address yourself further to
22 count 1?

23 MR. ROSENBAUM: With reference to count
24 1, just a very broad statement. In view of the very
25 broad statement, in view of the fact I am aware of the

rkall8

testimony here, I will make this pro forma application,
that the government has failed to prove a prima facie
case as to count 1.

THE COURT: Your motion to dismiss count
1 is denied.

You have your exception as to both.

MR. ROSENBAUM: Thank you.

THE COURT: You may proceed.

1 rke 1

2 UNITED STATES OF AMERICA

3 vs.

73 Cr. 489

4 JOSEPH M. MAURO

5 November 20, 1973
6 9:30 a.m.

7 (In open court.)

8 THE COURT: You may proceed, Mr. Rosenbaum.

9 MR. ROSENBAUM: Mr. Mauro.

xx 10 J O S E P H M. M A U R O, called as a witness
11 in his own behalf, having been first duly sworn by
12 the clerk of the Court, testified as follows:

xx 13 DIRECT EXAMINATION

14 BY MR. ROSENBAUM:

15 Q Mr. Mauro, when you answer my questions, please
16 speak so I can hear you and so everyone else in the jury
17 box can hear you and should you fail to understand any of
18 my questions, just say you don't understand and I will
19 try to repeat them so you could understand.

20 Mr. Mauro, you are the defendant in this action,
21 is that correct?

22 A Yes.

23 Q Are you married, sir?

24 A Yes.

25 Q How many years are you married?

rke 2

Mauro - direct

A Eleven years in January.

Q Do you have any children?

A Three.

Q How old are they, please?

A Nine, 8 and 2.

Q Mr. Mauro, have you ever been convicted of any crime in your life?

A No, sir.

Q Do you know Mr. Pasquale Cocco?

A Yes, I do.

Q When did you first meet Mr. Cocco and what is your relationship with Mr. Cocco?

A I met him approximately two and a half years ago through a friend of mine who had bought a business right next door to his house.

His is a three-family house. There are all commercial businesses on the first floor. My friend purchased a business right next door to his doorway and he came down there a lot and that is how I met him.

Q Would you classify yourself as social acquaintances with him, friends?

A We became friends.

Q How frequently would you see Mr. Cocco?

A Since before this, once, twice a week.

1 rke 3

Mauro - direct

2 Q Where would you see him generally speaking?

3 A Mostly at his home. He had a few parties for
4 his children, confirmation, birthdays, things like that,
5 which he had outside of the home.

6 Q Has he been to your home?

7 A Yes.

8 Q Have you been to his home?

9 A Yes, I have.

10 Q Do you recall February 13, 1973 at about 9:30
11 that evening?

12 A Yes, I do.

13 Q Do you recall whether or not Mr. Cocco came to
14 your house that evening?

15 A Yes, he did.

16 Q Who was in the house with you that evening?

17 A My wife and four other close friends, aside from
18 my children who were in bed.

19 Q Who were these other four friends?

20 A By name?

21 Q Yes.

22 A Angelina Messy; Salvatore Panessi; Frank Justo
23 and Nicholina Schine.

24 Q Do you know what day of the week this was?

25 A If I am not mistaken, I think it was a Tuesday

1 rke 4 Mauro - direct

2 evening.

3 Q What were you people doing in the house that
4 evening?

5 A They are very close friends and they are over at
6 least three, four nights a week.

7 Q Did Mr. Cocco come to your door that evening?

8 A Yes.

9 Q Did you have a conversation with Mr. Cocco when
10 he came to the door?

11 A I greeted him and told him to come in. He asked
12 me to come outside. He had some people he wanted me to
13 meet.

14 Q Did you go out to meet these people?

15 A Yes, I did.

16 Q Could you describe the circumstances of that
17 meeting and what happened?

18 A He just came to the door and said he had some
19 people he wanted me to meet and with that I said all right,
20 I told my wife I would be outside. They were parked directly
21 across the street from my house in a black 1972 Cadillac.

22 I went across the street. Pat got in, I followed
23 him, I sat behind the driver's seat in the rear seat and
24 Pat sat behind the passenger.

25 He introduced me to both of the gentlemen in the

1 rke 5

Mauro - direct

2 front seat, we shook hands.

3 With that Pat says look, they have counterfeit
4 money, ten dollar bills.

5 I had had previous--

6 Q Just tell me what happened.

7 A I told him I didn't want anything to do with
8 counterfeit money. It was too hot and I had my own hacks
9 with it. There was nothing I could do. With that he said
10 here, take this, which he handed to me--

11 Q Who is "he"?

12 A The gentleman in the front seat, Mr. Villano. He
13 turned the light of the car on and said look at it. What
14 do you think of it and I said it looks very good, but this
15 is no time for counterfeit money.

16 Q Did you tell him why you said or you felt it
17 was no time for counterfeit money as far as you were con-
18 cerned?

19 A Yes, I did.

20 Q What did you tell him?

21 A I told him not too long ago I had trouble because
22 of counterfeit money.

23 Q What trouble did you have because of counterfeit
24 money?

25 A I was arrested involving a charge that I was in

rke 6

Mauro - direct

conspiracy dealing with counterfeit money and the case was acquitted.

Q Acquitted or dismissed?

A Dismissed.

Q You were not acquitted, is that correct?

A That is correct

Q How long before the incident of February 13, 1973 did you have a problem with counterfeit money?

A The same year.

Q Pardon me.

A Excuse me, no. I think it was in July of '72.

Q How long did you remain in that car?

A No longer than 15 minutes, tops.

Q In addition to the discussion about counterfeit money, was there any other discussion?

A There were no other discussions.

Q Pardon me.

A There were no other discussions.

Q Was anything said to you with reference to stolen cashier checks?

A Nothing.

Q Was anything said in front of you in your presence by anyone else in that car with reference to stolen cashier checks?

rke 7

Mauro - direct

259

1
2 A No, sir.

3 Q What was the final statements made by all parties
4 concerned before you left that car?

5 A I don't recall which of the gentlemen in the
6 front seat spoke. I don't remember offhand exactly, but
7 I was told if I could do anything with them, to get in touch
8 with Pat, there was quite a bit available, and we could work
9 out a good price.

10 I left saying if anything happens, I will let Pat
11 know and I went to give the counterfeit bill back and Mr.
12 Villano said keep it and if anything happens notify Pat
13 and he will get in touch with us.

14 Q When you say if anything happens.

15 A If I could make any deals to sell them or if I
16 wanted any.

17 Q Sell what?

18 A The counterfeit ten dollar bills.

19 Q Did anyone speak with you with reference to coun-
20 terfeit ten dollar bills at any time after that February
21 13 meeting?

22 A No, sir.

23 Q Did Mr. Villano call you or Mr. Olsberg call you?

24 A I have not seen or heard from them since that
25 meeting except for today.

rke 8

Mauro - direct

260

Q Except for what?

A Except for the meeting today.

THE COURT: That is, seeing them in court?

THE WITNESS: Yes, sir.

Q Are you employed?

A I am self-employed.

Q What kind of work do you do?

A I do contracting painting.

Q Is Mrs. Mauro employed?

A Yes.

Q What type of work does she do?

A She is a substitute school teacher.

Q How long are you living at the same address
where you are living now?

A Approximately six years.

Q Did you have any knowledge as to these tellers
or cashier checks being stolen or available for disposition?

A I knew nothing about them whatsoever.

Q Did Mr. Cocco ever discuss anything with you
with reference to the cashier or tellers checks?

A No.

MR. ROSENBAUM: No further questions.

Mauro - cross

he knows how to get in touch with us.

Q That was it.

A That was the end of the conversation.

Q Mr. Mauro, you testified on direct examination that that conversation was 15 minutes in length.

A It could not have been more.

Q It could not have been more?

A I said it could not have been longer than ten.

Q What was the length of that conversation?

A Approximately 15 minutes from the time of departure of my front door to the time I was back in the house.

Q As you relate that conversation to us just momentarily, that conversation was substantially less than 15 minutes.

A True, but I am the only one speaking.

MR. ROSENBAUM: Objection, it is argumentative.

THE COURT: He responded.

Q Again, you state 15 minutes?

A Yes. There were three other gentlemen in the car who were talking aside from myself.

Q Was there any further discussion that you have not indicated?

A No. It all centered on the counterfeit ten dollar bills.

* * *

1 rke 14

Mauro - cross

266

2 which you testified?

3 A Yes.

4 Q Apart from handling it at the bureau, have you
5 ever seen counterfeit money or handled counterfeit money?

6 A I have seen it, I have not handled it.

7 Q Would you please tell us again what your response
8 was when the offer of counterfeit was made to you?9 A At the time, I wanted to go through the roof of the
10 car to get out of there.11 Q Mr. Mauro, why did you say if anything happens,
12 I will let Pat know as you closed that conversation in
13 reference to the counterfeit checks--in respect to the
14 counterfeit bills?

15 A Could you repeat that.

16 Q Your testimony is that you almost went through
17 the roof when you first heard about the counterfeit bills.18 A You asked me what I would have done at the time.
19 I said I would have liked to go through the roof to get away
20 from the people that brought it to me.21 I was burned with it once. In other words, I
22 was arrested because of counterfeit money once time. I am
23 not going to even think about going near it again.24 Q Under direct examination you also testified that
25 you closed the conversation by in parting statement if anything

1 rke 15

Mauro - cross

2 happens, I will let Patty know and this was in reference
3 to any counterfeit bills?

4 A True. These are two complete strangers in a car
5 in front of me. I am going to tell them I am afraid of it?
6 What do I care what they think "if anything happens, I will
7 let you know," and I left.

8 Q What did you mean by that statement?

9 A Nothing. In my mind, that was it, it was dropped.

10 Q Was there any representation by Mr. Cocco during
11 that meeting that you were his partner?

12 A No, sir.

13 Q Have you had business dealings with Mr. Cocco in
14 the past?

15 A No, sir.

16 Q Purely social acquaintance?

17 A Yes.

18 Q Was there any mention on February 13 of securities?

19 A No, sir.

20 Q Or stock?

21 A No, sir.

22 Q Did the name of the First National City Bank
23 come up during your conversation?

24 A After the discussion of counterfeit money, I
25 excused myself, I told him if anything happens with the

1 rke 16

Mauro - cross

2 money, I will get in touch with Pat and I opened the door
3 and left. There was no further discussion.

4 Q Did you engage in any discussion about points?

5 A There was no further discussion other than the
6 counterfeit money.

7 Q Did you hear any discussion with respect to the
8 First National City Bank Clerk that was placed in a Geneva
9 Switzerland Bank?

10 A There was no other discussion other than counter-
11 feit money. I left. Whatever they spoke about after I
12 had gone, I cannot comment on.

13 Q You stated that you knew--do you know Bruce
14 Romanoff?

15 A I have met him.

16 Q And you know Patty Cocco fairly well on a social
17 basis?

18 A Yes.

19 Q Again, How often do you see him?

20 A Now?

21 Q In the period 1973, February of that year?

22 A Once, twice a week.

23 Q During the month of February, Patty Cocco never
24 mentioned to you a deal that he was working with cashier
25 checks stolen from the First National City Bank?

1 rke 17

Mauro - cross

2 A He never got into specifics and I never asked
3 him.

4 He said he had something going, that is all I
5 know.

6 Q He never mentioned anything specific about the
7 First National City Bank?

8 A We never discussed it.

9 Q What did you discuss?

10 MR. ROSENBAUM: Objection.

11 THE COURT: Yes.

12 Q During this period of 1973--

13 MR. ROSENBAUM: It is an extensive period of
14 time.

15 THE COURT: Beginning in January?

16 MR. ROSENBAUM: Limit it to something.

17 THE COURT: Let's have a new question.

18 Q You state after this meeting on February 13, there
19 was no further reference whatsoever to counterfeit bills?

20 MR. ROSENBAUM: I have to object. This question
21 has been asked and answered repeatedly.

22 THE COURT: Overruled.

23 Q Do you have the question in mind?

24 A There was no further discussion.

25 Q Apart from any conversation wich you may or may
not have had with Patty Cocco, have you ever heard from any

1 rke 18 Mauro - cross
2 redirect
3 other source, any comment about some stolen First National
4 City Bank checks?

4 A Yes.

5 Q Did you hear about this prior to February
6 27, 1973?

7 A The date does not mean anything to me. I found
8 out about it through the news media and later on Mr. Dillon
9 and another agent came to my residence and questioned me in
10 connection with it.

11 Q Did you hear any information about these checks
12 from any other source?

13 A No, I did not.

14 Q You commented to Mr. Villano when he showed you
15 the counterfeit bill, they were very good, is that right?

16 A Yes.

17 Q How did you know they were very good?

18 A I know what a ten dollar bill looks like and
19 it looked like a ten dollar bill.

20 Q He told you it was a counterfeit ten dollar bill?

21 A Yes, he did.

22 MR. EBERHARDT: No further questions.

23 REDIRECT EXAMINATION

24 BY MR. ROSENBAUM:

25 Q When did you meet Mr. Romanoff the first time?

xx

rke 19

Mauro - redirect

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A Sometime last summer. The exact date or month, I really couldn't tell you.

Q What were the circumstances of that meeting with Mr. Romanoff?

A It was purely business as a favor to my neighbor. She thought her husband was running around and wanted to know if I knew any private detectives.

Q Mr. Romanoff is a private detective?

A I mentioned it to Pat and Pat told me he had a friend who was a private investigator and introduced me to Mr. Romanoff and that is how I met him.

Q Between that time in the summer of 1972, did you ever meet Mr. Romanoff again--

THE COURT: That time in the summer of '72?

MR. ROSENBAUM: I think he said the summer of '72.

THE WITNESS: Not this past summer, this last year?

THE COURT: In other words, you first met Mr. Romanoff sometime in the summer of 1972?

THE WITNESS: Yes.

Q Between the summer of '72 when you first met him, did you see him at any other time during the year 1972?

A No, just on that one occasion.

Q Did you see him during the year 1973 other than

1 rkrm2

Cocco-direct

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2 THE COURT: I never want to be unfair in anything
3 I do and therefore it is most important that we complete this
4 case.

5 Let me see how we proceed during the day, see
6 what sort of progress we make. I want to think about what
7 has been indicated to me. Obviously I have a slight bit of
8 latitude because I have two alternates but I have had problems
9 in the past with trains getting stuck and people becoming
10 ill over a holiday particularly when you will all eat well
11 tomorrow.

12 Under the two circumstances, I want to think more
13 carefully about it, so I am aware of the problem which has
14 been brought to my attention. I will think about it further
15 and try to do something during the course of the day and
16 perhaps we can solve at least part of the problems.

17 Mr. Rosenbaum, you may proceed.

18 MR. ROSENBAUM: Mr. Pasquale Cocco.

19 P A S Q U A L E C O C C O , called as a witness on
20 behalf of the defendant, being first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ROSENBAUM:

24 Q Mr. Cocco, you and I met for the first time this
25 morning; is that correct?

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Cocco-direct

279

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3 case.
4

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9 in the past with trains getting stuck and people becoming
10 ill over a holiday particularly when you will all eat well
11 tomorrow.

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13 carefully about it, so I am aware of the problem which has
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19 P A S Q U A L E C O C C O , called as a witness on
20 behalf of the defendant, being first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ROSENBAUM:

24 Q Mr. Cocco, you and I met for the first time this
25 morning; is that correct?

rkrm3

Cocco-direct

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1
2 A Yes, sir.

3 Q And we discussed the case and your testimony
4 today; is that correct?

5 A Yes.

6 Q And your lawyer, Mr. Curley, was present during
7 our discussion?

8 A Yes.

9 Q And that took place in this courthouse; is that
10 correct?

11 A Yes, sir, Room 107.

12 Q And you were given a subpoena by me this morning as
13 an accommodation that I did not have to go out to your house
14 and serve you last night?

15 A Yes.

16 Q Did you receive a \$2 travel fee?

17 A I did.

18 Q Did you receive any other compensation or were
19 you promised any other compensation for your testimony today?

20 A None whatsoever.

21 Q Are you testifying now under any threat by any-
22 body?

23 A Not at all.

24 Q Mr. Cocco, prior to your involvement in this
25 matter, have you ever been convicted of any crime during your

1 rkrn4

Cocco-direct

2 life?

3 A No, sir.

4 Q Were you in the service in the United States?

5 A I was.

6 Q And you received an honorable discharge?

7 A I was.

8 Q What other employment did you have during the last
9 few years?

10 A I worked for Katz Parking System as a manager. I
11 worked at Holiday Inn at Kennedy Airport as a desk clerk and
12 bellhop which I learned to be a night auditor through that.

13 I worked at the Golden Gate Inn at Sheepshead Bay
14 as a night auditor , night manager and at present, I am
15 holding a supervisor's job at A & B Duplicators on West 5th
16 Street.

17 Q Mr. Cocco, do you know the defendant Joseph Mauro?

18 A Yes, I do.

19 Q How long have you known him?

20 A Since I am living on Nostrand Avenue which would
21 be two, two and a half years.

22 Q What was your relationship with him, business,
23 social or what?

24 A No business. Just social from the neighborhood
25 other than the incident in the case.

rkrm5

Cocco-direct

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Q Do you know a man who goes under the name of Tony Romano?

A The name I know of is a fellow --

Q Just answer my question.

Do you know Tony Romano?

A Yes.

Q His true name?

A I don't know.

Q If I tell you his name is Villano, if I use them interchangeably, I am referring to the same person.

Can you describe him to me?

A He is tall. I have only seen him twice. I am sorry, I will retract that. I seen him four times, sir.

Q Besides being tall, do you recollect the color hair, his build?

A He is a very nice looking gentleman.

Q Dark hair, light hair?

A Dark hair I believe, sir.

Q Do you know or do you recall the first time that you met Mr. Romano?

A Yes, I do.

Q Where was that, please?

A That was three or four days before Lincoln's birthday which would be on a Monday, on the 12th or 13th, so

1 rkrn7

Cocco-direct

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2 A Yes. Mr. Ferula brought him into me --

3 Q Just answer my questions.

4 What did Mr. Romano say to you and what did you
5 say to Mr. Romano at that conversation?6 A At that conversation, Mr. Romano who was brought
7 to me by Mr. Ferula, told me he had some stock that he wanted
8 to sell.

9 Q Did Mr. Romano show that stock to you?

10 A He handed me that stock right outside the club.
11 I told him let's walk outside. He handed me the stock.12 Q What did you say or what did you do when he handed
13 the stock to you?14 A He said to me he would take anything for it. I
15 said I don't know, I would have to find out if it is any good.16 Q How long did this meeting take place between you
17 and Mr. Romano, your first meeting?

18 A 20, 25 minutes.

19 Q What kind of stock was it, how many shares of
20 stock?21 A I only recall two stocks in there. There was AT&T
22 and a Delaware stock. Those were the only two I could recall
23 right offhand the names. There were two other stocks, one or
24 two other stocks but I don't recall the names, sir.

25 Q Did you have a discussion with him about anything

rkrm8

Cocco-direct

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else that night in addition to the stocks?

A Only to the stocks, sir.

Q Are you certain of that?

A Yes, sir.

Q Did you discuss with him that night anything about counterfeit 10's?

A That night?

Q Yes, I am referring only to that night.

A No, sir.

Q Did you discuss with him anything about teller's checks or cashier checks in any denomination?

A No, sir.

Q After you spoke with Mr. Romano and he gave you the stock certificates, did you make arrangements to meet with him at any time?

A Yes. I told him I wouldn't be able to find out until Tuesday being Monday was a holiday, Lincoln's Birthday, and to come back Tuesday night.

Q Did you arrange to meet him anywhere Tuesday night?

A At the club.

Q The same club you initially met him?

A Right, sir.

Q Is that club near where you live?

rkrm9

Cocco-direct

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A Right across the street from my house.

Q Did you meet him that Tuesday night?

A I did, sir, by accident. I did not know the club was going to be closed, so I was in the bar next to my house having a beer when up pulled Mr. Romano in a 1973 red Cadillac with a white top and he had another gentleman with him.

I ran out the door to call him before he pulled away and he came into the bar and I explained to him that the stock was no good, so I said, "Come with me upstairs and I will get them," so I went up to my house to get them. He walked me upstairs. Then we came down and I handed him the stock downstairs in front of the car and explained to him that it was no good and he said, "I will take even \$100 for it," and I said, "It is not worth a nickel, that instead of destroying it, you should take the name of the stock, put it on an envelope and mail it to the person in case they can't locate and it is no good to no one, send it back to the person and don't put your return address," and the fellow in the car said, "That is a good idea," the fellow sitting there by the name of Herbie.

Q Would that be Mr. Olsberg?

A I don't know his last name.

Q If I tell you his name was Mr. Olsberg --

A That was the gentleman.

1 rkrml0

Cocco-direct

2 THE COURT: Could you describe him to us?

3 THE WITNESS: He is short, a little huskier than
4 me. I would say about my size but he had a little belly on
5 him, an elderly man.

6 THE COURT: What color hair did he have?

7 THE WITNESS: I couldn't tell you offhand.

8 Q If you saw him, would you be able to identify him?

9 A Yes, I would.

10 MR. ROSENBAUM: I don't know if Mr. Olsberg or
11 anybody is in the courthouse to be produced.

12 THE COURT: I would imagine we could get a
13 concession that this is the fact, in other words, that the
14 other man in the vehicle in addition to Mr. Villano was Mr.
15 Olsberg.

16 MR. EBERHARDT: The Government so stipulates.

17 THE COURT: The jury will accept that as a fact
18 without our having to put in any further proof, that whether
19 Mr. Cocco got into the Cadillac automobile, there were two
20 gentlemen in the car, Mr. Villano who accompanied him to the
21 car and the other gentleman who everyone agrees was Mr.
22 Olsberg.

23 Q After these stock certificates were returned to
24 Mr. Villano, what if anything happened?

25 A Mr. Villano says to me, "Well, I have something

1 rkrall

Cocco-direct

2 else," so I in turn said, "What." He said, "I have a bunch
3 of phony 10's."

4 Q Where did this conversation take place?

5 A It took place right in front of Water's Bar, right
6 next to my house. I live at 2013 -- 2011, I mean.

7 Q Were you inside the car or outside the car?

8 A I was outside the car.

9 Q Where was Mr. Villano when he made the statement
10 to you?

11 A He was standing outside right next to me.

12 Q Where was Mr. Olsberg or Herb?

13 A He was sitting inside on the other side opposite
14 the driver's side.

15 Q After Mr. Villano told you about these 10's,
16 these phony 10's, what if anything did you do or say to him?

17 A I said the only one I know that might be inter-
18 ested is a friend of mine who lives around on 39th Street by
19 the name of Joe Mauro.

20 Q Why did you tell him that he might be interested?

21 A Because in the course of time I had known Mr.
22 Mauro, he told me he was in some kind of a case with phony
23 money at one time.

24 Q What did Mr. Villano or Mr. Olsberg say after you
25 made that statement?

rkral2

Cocco-direct

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1 A "Take us around to see him," so I got in the car
2 with both of them and drove around to Mr. Mauro's house.

3 Q Was any stock transferred in the car between the
4 time you rode from your house to Mr. Mauro's house and when I
5 say stock passing, stock certificates?
6

7 A No, sir.

8 Q And you arrived at Mr. Mauro's house?

9 A Yes.

10 Q Do you recall what you were discussing in the car
11 from the time you left your house and on the way to Mr.
12 Mauro's house, if you recall?

13 A About what?

14 Q What were you talking about?

15 A We were talking about the money, the phony money
16 that he had and how much points did he want and how much he
17 could get, a supply of it.

18 Q Did he at any time, either party, Mr. Villano or
19 Mr. Olsberg make any statement to you or did you make any
20 statement to them with reference to any teller's checks,
21 cashier checks?

22 A Not on that night.

23 Q There came a time when you arrived at Mr. Mauro's
24 house.

25 A Yes, sir.

rkrm13

Cocco-direct

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Q Did anybody go get Mr. Mauro?

A I did, sir.

Q Did you go to his house?

A I rang his bell.

Q Did he come out?

A Yes. He had company and he didn't want to come out but I told him it would only take five or ten minutes.

Q Did he come out ultimately?

A Yes.

Q Where did he go with you?

A He got in the car and we both sat in the back while Mr. Villano and Mr. Herbie sat up front.

Q Mr. Herbie would be Mr. Olsberg?

A Yes.

Q Do you know which part of the car Mr. Olsberg sat?

A He sat on the right and Mr. Villano was behind the driver's seat.

Q What was the conversation or discussion that took place at that time?

A The discussion at that time was, I introduced Mr. Mauro to Mr. Romano and told him that he had some bad 10's, so Mr. Mauro says he was in trouble once with them and offhand he didn't want to get hooked up with anything but maybe he might know somebody.

rkral4

Gocco-direct

1 In that turn, Mr. Villano gave one 10 to Mr. Mauro.
2 He said, "Here, look at this." He had a pile of them in his
3 pocket. Mr. Mauro looked at it. He said, "Good stuff, ain't
4 it?" and he said, "I don't know how good it is."

5 Q Do you recall if Mr. Mauro examined that by means
6 of a light?

7 A No, he just held it in his hands and looked at it
8 and felt it.

9 THE COURT: In the dark?

10 THE WITNESS: In the car.

11 THE COURT: In the dark? This is at night, isn't
12 it?

13 THE WITNESS: Yes, the light was on in the car.

14 THE COURT: The dome light?

15 THE WITNESS: Yes.

16 Q When you say the dome light, the dome light in the
17 car was on?

18 A Yes.

19 Q Do you know what Mr. Mauro did with that counter-
20 felt 10 or phony 10, did he take it with him?

21 A Yes, he did.

22 Q Do you know what his statement was if he made any
23 statement before he left the car?

24 A Yes. He said that he would let me know if he
25

1 rkral5

Cocco-direct

2 knew anybody and the amount if they needed it.

3 Q That he would let you know?

4 A Yes.

5 Q How long did Mr. Mauro remain in the car from the
6 moment he got in until the time he left?

7 A 15, 20 minutes the most.

8 Q Was there any discussion during that period of
9 time about cashier checks, teller checks in any denomination?

10 A None whatsoever.

11 Q Was there any discussion with reference to any-
12 thing else as far as selling is concerned other than the
13 counterfeit 10's?

14 A No, we were just talking of phony money.

15 Q Are you absolutely certain of it?

16 A Yes.

17 Q Do you realize you are under oath?

18 A I do, sir.

19 Q After Mr. Mauro left the car, you remained with
20 Mr. Olsberg and Mr. Romano; is that correct?

21 A Yes, sir.

22 Q Where did you go from there?

23 A They drove me home.

24 Q Did you make any other arrangements to meet them
25 at a future date?

rkrm16

Cocco-direct

A Yes. Mr. Villano or Romano gave me a telephone number to call him up as soon as I heard from Mr. Mauro about the money, which was supposed to be on a Wednesday night. He said he would be at his girlfriend's house.

On a Wednesday, I returned that call and got a lady on the phone, I don't know who she was. She called Mr. Romano to the phone and told him I I didn't hear nothing so far. He said, "Come up to Paxton's Friday night at 8 o'clock if you hear anything," that he would have some girls and steak dinners and we will go out.

Q Would that be the Wednesday after Lincoln's Birthday?

A Yes, sir.

Q Would that be the 13th or thereabouts?

A Around the 14th or 15th.

THE COURT: What was the date you were in the car with these gentlemen?

THE WITNESS: The day I was in the car was the Tuesday, the following day after Lincoln's Birthday.

THE COURT: It was a Tuesday in February of this year?

THE WITNESS: Yes, sir.

THE COURT: The Court would take judicial notice --

THE WITNESS: Lincoln's Birthday is on the 13th.

1 rkrml7

Cocco-direct

2 THE COURT: That Tuesday, February 13, 1973 fell
3 on a Tuesday.

4 It wasn't the prior Tuesday, the 6th or the 7th,
5 the 20th?

6 THE WITNESS: No.

7 Q So on February 13th you called up Mr. Romano at
8 the number he gave; is that correct?

9 A Right.

10 Q And that was a telephone call made as a result of
11 your agreement with him on February 8th or 9th?

12 A Right.

13 Q The time you were in the car.

14 THE COURT: I think someone is confused here.

15 Let me see --

16 MR. ROSENBAUM: I am sorry, your Honor, it is my
17 mistake.

18 THE COURT: You were in the car on Tuesday the
19 13th of February?

20 THE WITNESS: Lincoln's Birthday was the 12th.
21 Yes, I was in the car Tuesday night.

22 THE COURT: When did you call and speak with the
23 woman, then Mr. Villano?

24 THE WITNESS: On a Wednesday night it was, sir,
25 because I had to meet him on a Friday.

rkrmld

Cocco-direct

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Q Was that Wednesday night the 14th or the following week, do you recall?

A I don't know if it was the following night or the following Wednesday. I couldn't be sure. It was on a Wednesday night that I called. I think it was the following because I had to have time to wait for Mr. Mauro to give me an answer. I am not positive. It had to be one of those Wednesdays.

Q And you telephoned this number and a lady answered the phone and Mr. Romano came to the telephone?

A Yes.

Q What was your conversation with him at that time on the telephone?

A That I didn't hear anything from Mr. Mauro.

Q What did he say to you after you told him that?

A He said, "Come down to Paxton's Friday at 8 o'clock anyway and have a steak and a drink and we will have some girls, I will have some girls there."

Q Did you proceed to Paxton's that Friday night?

A I wasn't going to.

Q Why?

A Because on a Thursday, on television, they had a big, on the news report, about a big crackdown of phony 10's in New York on Broome Street ~~scampage~~ and I thought -- he told

rkral9

Cocco-direct

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1 me he came from New York and I figured he was connected with
2 that clique with phony money and I told him I had to go tell
3 him that Mr. Mauro wasn't interested and not show up, this
4 way he would be waiting there because they were waiting there
5 and I went there that night.

7 Q You went to Paxton's that Friday night?

8 A Yes.

9 Q Did you have any discussion with him about the
10 phony 10's?

11 A Yes, I did. He said, "I haven't heard nothing."
12 He said to me, "It is too late. I guess you seen the tele-
13 vision last night." I said, "Yes, I thought you might have
14 been hooked up with those people." He said, "Yes, but I have
15 \$3,000 worth home left if Mr. Mauro or any of his friends are
16 interested." I said I don't know, I would have to ask them.
17 He said, "Have a steak and a drink," and the gentleman that
18 drove me there, a friend of mine, we had a steak and a drink.

19 Q What was his name?

20 A Mario Argentino.

21 Q Did you have any discussions that night about
22 anything else other than the counterfeit 10's with either Mr.
23 Romano or anybody else?

24 A Yes, I did.

25 Q With whom did you speak?

rkrm20

Cocco-direct

1 A After eating the steak and drink, Mr. Romano passed
2 a remark saying, "By the way, I hear you have something."

3 Q What did you respond?

4 A I responded yes, but I would have to talk it over
5 with this partner of mine.

6 Q Who was your partner?

7 A Mr. Romanoff at that time.

8 Q What did he refer to when he said he thought you
9 had something?

10 A The stocks. The cashier checks.

11 Q Before that night at Paxton's Restaurant, did Mr.
12 Romano or Mr. Olsberg ever say anything to you with reference
13 to those cashier's or teller's checks?

14 A Before the what, sir?

15 Q Before the night you met at Paxton's with Mario,
16 when Mario drove you down there.

17 A No.

18 Q Are you certain that nothing was ever said to you
19 before that night with reference to teller's and cashier
20 checks?

21 A No.

22 Q You are not certain?

23 A Yes, I am certain. I didn't get the question
24 right.
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Cocco-direct

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Q Did you make any arrangements with regard to teller's or cashier checks with Mr. Romano after that meeting or at that meeting at Paxton's?

A Did I make arrangements?

Q Yes. Did you show him the checks, or work out a sale of the checks?

A I told him I would have to see Mr. Romanoff and talk it over with him.

Q I don't want to get involved in that aspect of it. Did you at any time discuss those cashier or teller's checks with Mr. Mauro?

A No, sir.

Q Were you ever present at any time when Mr. Romanoff and Mr. Mauro were together after the 13th of February or on or about the 13th of February?

A No, sir.

Q Do you have any knowledge whether or not Mr. Romanoff and Mr. Mauro ever had anything to do with each other relative to these cashier or teller's checks?

A No, sir.

Q Mr. Cocco, you were charged also in this crime with the conspiracy?

A I was.

Q And you did plead guilty to the charge?

rkrm24

Cocco-cross

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2 A About the case, yes, just how the case was going,
3 that is all. I asked him how his case was going.

4 Q Prior to the discussion you had in the corridor,
5 did you have any other discussion with respect to his testimony
6 in this case?

7 A No, sir.

8 Q Or your testimony?

9 A No.

10 Q When is this discussion which you just mentioned
11 with respect to how the case was going, when was that dis-
12 cussed?

13 A This was on the way here this morning.

14 Q You haven't discussed the case prior to that with
15 him?

16 A No, I would not talk to him or his lawyer on the
17 grounds my lawyer told me not to talk to no one of them until
18 they talked to him.

19 Q You and Mr. Mauro were indicted together; is that
20 correct?

21 A Excuse me?

22 Q Isn't it true that you and Mr. Mauro were indicted
23 together on this case?

24 A No. I was indicted a month and a half before Mr.
25 Mauro was indicted.

rkrm38

Cocco-cross

315

Q At the time you entered the car with Mr. Mauro until the end of that conversation, will you please tell us to the best of your recollection what was said and by whom.

A Most of the talking was done by Mr. Villano. He was telling us how much of this stuff he had, how much points and he broke it down, if it is \$25,000 worth, it is so many points and if it is \$50,000, you might get it for little cheaper points, stuff like that and they were talking back and forth and we all had something to say about the money, then the conversation ended and he said, "I will let Patty know," and he got out of the car.

Q Did you introduce Joseph Mauro as your partner?

A I used the term partner at the time on that phony money because I figured I would get something out of it.

Q On direct examination you indicated that you had no business dealings with Mr. Mauro, that your relationship was purely social.

A Yes.

Q But now in the context of counterfeit bills, you assume a partnership status with Mr. Mauro?

MR. ROSENBAUM: Objection.

THE COURT: Sustained.

Q Was this reference to partners in the context of the counterfeit bills?

* * *

rkrm41

Cocco-cross

318

your disposal stolen cashier checks?

A On the 13th in the car, sir?

Q Yes.

Did you know about it. Was there any reference or discussion about stolen cashier checks?

A No.

Q Was there any mention about perfect forgeries on cashier checks?

A No.

Q Mr. Cocco, the checks that eventually were produced at the February 27th meeting at Paxton's Restaurant, are you familiar with the original checks?

A Yes, sir.

Q Do you know for a fact that those were stolen?

A Yes, sir.

Q How do you know that they were stolen?

A Well, they weren't forged. I took for granted they were stolen checks.

Q Joseph Mauro exited the automobile after this conversation regarding counterfeit bills; is that your testimony?

A Yes.

Q And your testimony is there was no discussion of any other topics in that automobile except counterfeit bills?

A Not with Mr. Mauro.

* * *

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rkrm50

Cocco-cross-redirect

The jury can draw its own conclusions.

MR. EBERHARDT: No further questions.

REDIRECT EXAMINATION

BY MR. ROSENBAUM:

Q When you first found out about these stolen or cashier checks, you said you found out about them through Mr. Romanoff?

A Yes, but I didn't know they were stolen.

Q About the cashier checks.

A Right.

Q From the moment that you found out about them which may have been several months before the February 1973 meetings, did you at any time discuss those checks or the disposition of those checks with Mr. Joseph Mauro?

A No, sir.

MR. ROSENBAUM: No further questions.

MR. EBERHARDT: No further questions.

THE COURT: You may step down.

(Witness excused.)

MR. ROSENBAUM: That is all. The defendant has no further witnesses.

THE COURT: The defendant rests?

MR. ROSENBAUM: That is correct.

THE COURT: Mr. Eberhardt?

rkrm83

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2 THE COURT: The Court has considered the matter
3 carefully. The Court has heard from counsel. The question
4 is not completely free from doubt.

5 However, in the interest of what the Court believes
6 to be just, objection by defense counsel is sustained.

7 MR. EBERHARDT: May I note my objection for the
8 record.

9 THE COURT: Yes.

10 MR. EBERHARDT: In view of the fact Mr. Fleisher
11 is not going to be able to testify with respect to the evi-
12 dence I proposed, at this point the Government rests.

13 THE COURT: Mr. Rosenbaum?

14 MR. ROSENBAUM: The defendant also rests.

15 THE COURT: Both sides rest.

16 I would hear a motion now from defense counsel and
17 I will then give you an indication of my proposed charge and
18 we will proceed with the closing arguments.

19 MR. ROSENBAUM: If your Honor please, defendant
20 respectfully moves that both counts of the indictment be
21 dismissed as against the defendant, again for the following
22 reasons.

23 Primarily -- initially Mr. Crump testified with
24 reference to the cashier's or teller's checks that they were
25 of no value; that they couldn't have been paid out by the bank

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2 and from the very inception, the holder in due course do not
3 obtain value from those checks and there was no loss involved
4 to the United States Government.

5 With respect to the charges against the defendant
6 in the conspiracy, again, your Honor, the only conversation
7 which allegedly took place in which the defendant was present
8 at, was one which lasted at most 25 minutes and which sub-
9 sequent to that there were no overt acts, no further acts, no
10 further conversations, no further contact with this defendant
11 and any of the other parties, either the undercover agent,
12 Mr. Olsberg; no one ever saw my client go into Paxton's
13 Restaurant, no one ever spoke to my client after that period
14 of time and I give great question even as to the meeting of
15 February 13th, your Honor, that any discussion was made with
16 reference to cashier's and/or teller's checks.

17 The agent, Mr. Romano, testified that a conversa-
18 tion took place but my recollection is that Mr. Mauro did not
19 say anything in particular but kept referring to them both,
20 them both, them both and I think at one time he did make men-
21 tion that Mr. Mauro did make reference to a two and a half
22 million dollar check.

23 His testimony, your Honor, was so much in dispute
24 by that of Mr. Olsberg, that I would also give great doubt as
25 to the validity and credence of Mr. Villano's testimony. I

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2 think some of the things I am saying now would more properly
3 be said before the jury in summation.

4 At this point I will stop by saying that I feel
5 the Government has failed to prove the defendant guilty beyond
6 a reasonable doubt.

7 THE COURT: The defendant's motion for judgment
8 of acquittal is in all respects denied.

9 You have your exception.

10 Relative to my charge, I have received from the
11 Government a number of requests. I will charge all the
12 Government's requests in substance with the exception of
13 Government request No. 6 which I decline to charge.

14 The Government's request outlines my own charge
15 rather closely with the exception there would be certain
16 boiler plate matter which I will address to the jury as I
17 proceed with the charge.

18 I would suggest at this point that we take a five-
19 minute recess so you gentlemen can gather your notes together
20 and we will proceed to the closing arguments by counsel.

21 May I inquire, I did briefly this morning, but
22 maybe you thought about it more, how long each of you expects
23 to take?

24 Mr. Rosenbaum?

25 MR. ROSENBAUM: Your Honor, I do believe I would

* * *

rkkm 6

CHARGE OF THE COURT

Ladies and gentlemen, we come now to that stage of the case where you and I, both of us, do our part in the administration of justice in this case.

Your role is to pass upon and decide the factual issues. As has been already indicated by me in preliminary remarks to you and by counsel, you are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses. You resolve such conflicts as there may be in the evidence and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case.

My function is to instruct you as to the law applicable to the case. It is your duty to accept the law as I give it to you in these instructions, and to apply the law to the facts as you find them.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the Government or for the defense, may have said with respect to matters in evidence, or as to any factual matter whether stated in a question, in argument or in summation, is not to be substituted for your own independent recollection.

So, to, anything I may have said during the

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2 trial or anything I may refer to in my brief marshaling of
3 the facts during the course of these instructions as to
4 any matter in evidence or as to any factual matter, is
5 not to be taken in lieu of your own recollections.

6 As I indicated in my preliminary remarks, in the
7 event your recollections differ among yourselves as to
8 what a particular witness said, you may have any portion
9 of that witness's testimony read back to you by the Court
10 Reporter. The procedure that is followed as I have said,
11 a note is sent out, you are brought back into the court-
12 room, and the Court Reporter reads back to you a portion
13 of the minutes that he has been taking so carefully, and
14 you will hear the exact words that were used.

15 Joseph Mauro has pleaded not guilty. Therefore
16 the Government has the burden of proving the charges
17 against him beyond a reasonable doubt.

18 It is a burden that never shifts, and remains
19 upon the Government throughout the entire trial.

20 A defendant does not have to prove his innocence.
21 On the contrary, he is presumed to be innocent of the
22 charges contained in the indictment. The presumption of
23 innocence was in his favor at the start of the trial, and
24 continues in his favor ~~throughout~~ the trial.

25 It is removed if and when you are satisfied that

1 rkkm 8

2 the Government has sustained its burden of proving the
3 guilt of the defendant beyond a reasonable doubt.

4 The case was commenced by the filing of an
5 indictment. As I told you when you were being selected,
6 an indictment is not evidence. It is a technique or
7 method or procedure by which persons accused by the grand
8 jury of crimes are brought into court and then their
9 guilt or innocence is determined by a trial jury such as
10 you are. An indictment has no evidentiary value. The
11 indictment does not constitute proof or evidence. It is
12 merely an accusation.

13 The defendant in this case is charged in a
14 two-count indictment. He is charged in count one with
15 conspiracy. This is a violation of the criminal law which
16 is set forth in Title 18 of the United States Code.

17 The definition of conspiracy is found in Section
18 371 of this Title, the pertinent parts of which I will now
19 read to you .

20 "If two or more persons conspire, either to com-
21 mit any offense against the United States or to defraud
22 the United States or any agency thereof in any manner or
23 for any purpose, and one or more of such persons do any
24 act to effect the object of the conspiracy," then they
25 are guilty of conspiracy.

1 rkkm 9

2 The defendant is charged in count two of the
3 indictment with having violated Title 18 of the United
4 States Code, Section 2113(c), which provides in pertinent
5 part:

6 "Whoever receives, possesses, conceals, stores,
7 barter, sells or disposes of money, property or anything
8 of value, knowing the same to have been taken from a bank
9 in violation of Subsection (b) of this section is guilty
10 of a crime."

11 Subsection (b) provides in pertinent part as
12 follows:

13 "Whoever takes and carries away with intent
14 to steal or purloin money, property or anything of value
15 exceeding one hundred dollars belonging to or in the care,
16 custody, control, management or possession of any bank,
17 is guilty of a crime."

18 Section 2113(f) of Title 18 describes the term
19 bank to mean any bank, the deposits of which are insured
20 by the Federal Deposit Insurance Corporation. You recall
21 the bank in this case was the First National City Bank of
22 New York, and there is testimony in the record that the
23 deposits of that bank are insured by the Federal Deposit
24 Insurance Corporation.

25 I shall now read the indictment, and I quote:

1 rkkm 10

2 "The grand jury charges, one: From on or about
3 July 1, 1972, up to and including the date of the filing of
4 this indictment, in the Southern District of New York and
5 elsewhere, Pasquale Cocco, Joseph Mauro and Bruce Romanoff,
6 the defendants, did unlawfully, wilfully and knowingly
7 combine, conspire, confederate and agree together and
8 with each other and with other persons to the grand jury
9 known and unknown, to commit offenses against the United
10 States, to wit, to violate Title 18, United States Code,
11 Section 2113(c).

12 "Two: It was part of said conspiracy that the
13 defendants would receive, possess, barter, sell and
14 dispose of property, money and things of value exceeding
15 one hundred dollars, to wit, three cashier checks made
16 out in the total amount of eight million four hundred ten
17 thousand dollars, knowing the said checks to have been
18 unlawfully taken and carried away from the First National
19 City Bank, Broadway and 56th Street, Manhattan, New York,
20 the deposits of which are insured by the Federal Deposit
21 Insurance Corporation.

22 "Three: Among the means whereby said defendants
23 carried out the conspiracy were the following.

24 A. The defendants Pasquale Cocco, Joseph
25 Mauro and Bruce Romanoff made arrangements to dispose of

1 rkkm 11

2 the said stolen cashier checks to purchasers for ultimate
3 disposition in Europe.

4 B. The defendants Cocco and Romanoff
5 displayed photostatic copies of the said stolen cashier
6 checks to prospective purchasers.

7 C. The defendants Cocco and Romanoff
8 arranged with prospective purchasers of said cashier checks
9 that said prospective purchasers would place \$25,000 in a
10 safety deposit box pending the disposal of the stolen
11 checks by the purchasers.

12 "Overt Acts. In furtherance of the said con-
13 spiracy, and to effect the objectives thereof, the defend-
14 ants in the Southern District of New York and elsewhere,
15 committed and caused to be committed the following overt
16 acts among others:

17 "1. On or about February 13, 1973, the defendants
18 Pasquale Cocco and Joseph Mauro attended a meeting at
19 East 39 Street in the vicinity of Avenue D, Brooklyn, New
20 York.

21 "2. On or about February 16, 1973, the defendant
22 Pasquale Cocco attended a meeting at Paxton's Restaurant,
23 74th Street and Second Avenue, Manhattan, New York.

24 "3. On or about February 27, 1973, the defendants
25 Pasquale Cocco and Bruce Romanoff attended a meeting at

1 rkkm 12

2 Paxton's Restaurant, 74th Street and Second Avenue, New
3 York, New York."

4 (Title 18, United States Code, Section 371.)

5 Count 2, the grand jury further charges:

6 "On or about February 27, 1973, in the Southern
7 District of New York and elsewhere, Pasquale Cocco, Joseph
8 Mauro and Bruce Romanoff, the defendants, did unlawfully,
9 wilfully and knowingly possess, barter, sell and dispose
10 of property, money and things of value exceeding one
11 hundred dollars, to wit, three cashier checks made out in
12 the total amount of eight million four hundred ten
13 thousand dollars, knowing the checks to be taken in viola-
14 tion of Section 2113(b) of Title 18 of United States Code
15 from the First National City Bank, Broadway and 56th Street,
16 New York, New York, a bank, the deposits of which were then
17 insured by the Federal Deposit Insurance Corporation."

18 (Title 18, United States Code, Section 2113(c)
19 and 2.)

20 There is only one defendant of the three named
21 in the indictment on trial before you. That is Joseph
22 Mauro. You should not concern yourself with the reason
23 why the other defendants are not being tried before you.
24 You did see and hear Pasquale Cocco testify, and he did
25 testify that he had pleaded guilty to certain charges

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2 contained in this indictment. The fact that he pleaded
3 guilty should not be taken in any way, shape or form
4 against Mr. Mauro. You are here to deliberate and to
5 consider the charges in this indictment as they relate
6 to Joseph Mauro.

7 In order to find Joseph Mauro guilty of ~~the~~
8 conspiracy charged in the first count of the indictment,
9 you must find beyond a reasonable doubt, first, that
10 some time between July 1, 1972, and the date of the filing
11 of the indictment, which was May 24, 1973, an agreement
12 existed between Joseph Mauro and any other person, whether
13 that person is presently on trial before you or not.

14 Second, that it was a part of this agreement
15 to do the following:

16 A, to possess, sell and dispose of cashier checks
17 of a value of eight million four hundred ten thousand
18 dollars, knowing the said checks to have been unlawfully
19 taken from the First National City Bank.

20 B, to make arrangements to deliver said stolen
21 cashier checks to prospective purchasers and to share in
22 the profits of the sale.

23 Third, that the defendant Joseph Mauro knowingly
24 associated himself with the conspiracy.

25 Fourth, that one of the conspirators, Joseph

1 rkkm 14

2 Mauro, Pasquale Cocco, or Bruce Romanoff, committed at
3 least one of the three overt acts set forth in the agreement
4 at or about the time and place alleged, and that such overt
5 act was knowingly done in furtherance of the conspiracy.

6 What is a conspiracy? A conspiracy is a combina-
7 tion or agreement of two or more persons by concerted
8 action to accomplish a criminal or unlawful purpose, or
9 some purpose not in itself criminal or unlawful by criminal
10 or unlawful means.

11 The gist of the crime of conspiracy is the
12 unlawful combination or agreement to violate the law.
13 Whether or not the defendant accomplished what it is
14 alleged he conspired to do is immaterial to the question
15 of guilt or innocence.

16 A conspiracy has some times been called a
17 partnership in a criminal purpose at which time each member
18 becomes the agent of each other member.

19 To establish a conspiracy, the Government is not
20 required to show that two or more persons sat around a
21 table and entered into a solemn compact, orally or in
22 writing, stating that they have formed a conspiracy to
23 violate the law, setting forth the details of the plans,
24 the means by which the unlawful project is to be carried
25 out, or the part to be played by each conspirator.

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2 Indeed, it would be extraordinary if there were
3 such a formal document or specific oral agreement.

4 Your common sense will tell you that when a man
5 in fact undertakes to enter into a criminal conspiracy,
6 much is left to an expressed understanding. Conspirators
7 do not usually reduce their agreements to writing, or
8 acknowledge them before a Notary Public, nor do they
9 broadcast their plans. From its very nature, a conspiracy
10 is almost always characterized by secrecy, rendering
11 detection difficult.

12 Thus, it is sufficient if two or more persons
13 in any matter through any contrivance, impliedly or
14 tacitly, come to a common understanding to violate the law.
15 Expressed language or specific words are not required to
16 indicate assent or attachment to a conspiracy. In this
17 connection, it is not necessary for the Government to
18 prove the success of the conspiracy in order to establish
19 a violation of the conspiracy statute.

20 As a conspiracy is basically an agreement to
21 violate the law, it may exist even though the final objec-
22 tives were never accomplished.

23 In determining whether there has been an unlawful
24 agreement, you may judge the acts and conduct of the
25 members of the conspiracy which are done to carry out an

1 rkkm 16

2 apparent criminal purpose. The addage "actions speak
3 louder than words" is applicable here. Usually the only
4 evidence available is that of disconnected acts on the part
5 of the alleged individual conspirators, which acts, however,
6 when taken together, in connection with each other and
7 with the reasonable inferences flowing therefrom, show
8 a conspiracy or agreement to secure a particular result as
9 satisfactorily and conclusively as more direct proof. If
10 upon such consideration of all the evidence, direct or
11 circumstantial, you find it beyond a reasonable doubt that
12 the minds of at least two of the alleged conspirators
13 met in an understanding way, and they agreed as I have
14 explained to a conspiratorial arrangement to work together
15 in furtherance of an unlawful goal alleged in the
16 indictment, then proof of the existence of the conspiracy
17 is established.

18 Once satisfied that the conspiracy charged exists,
19 you must ask yourself who its members were. In deciding
20 whether Joseph Mauro was a member of the conspiracy, you
21 should consider whether on all the evidence, Joseph Mauro
22 was wilfully and knowingly a party to the conspiracy.

23 In determing whether Mr. Mauro became a member
24 of the conspiracy, you must determine not only whether he
25 participated in it, but whether he did so with knowledge

1 rkkm 17

2 of its unlawful purpose. Did he join with awareness of,
3 at least some of the basic aims and purposes of the
4 conspiracy? Knowledge is a matter of inference, from
5 fact or proof. It is not necessary that a defendant be
6 fully informed as to the details of the scope of the
7 conspiracy in order to justify any inference of knowledge
8 on his part. To have guilt knowledge, a defendant need
9 not know the full extent of the conspiracy and all of its
10 activities and actions.

11 I want to caution you, that mere association with
12 one or more of the conspirators does not make one a member
13 of the conspiracy, nor is knowledge, without participation,
14 sufficient. What is necessary is that the defendant
15 participated with knowledge of at least some of the purposes
16 of the conspiracy and with intent to aid in the accomplish-
17 ment of thoes unlawful ends.

18 All of the conspirators need not be acquainted
19 with each other. They may not have been previously asso-
20 ciated together. The defendant may know only one of the
21 members of the conspiracy, but if he enters into an un-
22 lawful agreement with that one member of the conspracy, he
23 becomes a party thereto.

24 Once you have found the conspiracy to exist
25 and the defendant to have knowingly participated in it,

1 rkkm 18

2 the extent of his participation has no bearing on his
3 guilt or innocence. The guilt of a conspirator is not
4 measured by the extent or the duration of his participation;
5 even if he participated in the conspiracy to a degree more
6 limited than that of his co-conspirators, he is equally
7 culpable, so long as he was in fact a conspirator.

8 When people enter into a conspiracy to accomplish
9 an unlawful end, they become agents for one another in
10 carrying out the conspiracy. Hence, the acts or declara-
11 tions of one in the course of the conspiracy and in fur-
12 therance of the common purpose are deemed to be the acts
13 of all, and all are responsible for such acts.

14 Accordingly, if you find in accordance with these
15 instructions that the alleged conspiracy existed and that
16 some or all of the alleged co-conspirators were partici-
17 pants in it, then acts done and statements and declarations
18 made in furtherance of the conspiracy by the persons found
19 by you to have been members of the conspiracy, may be
20 considered against Joseph Mauro if you find him to have
21 been a member, even though such acts or declarations were
22 made in the absence and without the knowledge of Mr.
23 Mauro.

24 It is important to note that this principle
25 applies only to acts and declarations done or made during

1 rkkm 19

2 the continuance of the conspiracy and in furtherance of
3 it. That is, to carry out an unlawful objective or purpose
4 of the conspiracy. It does not apply to acts or declara-
5 tions which do not have these characteristics.

6 Now we come to the fourth, final element you
7 must consider, assuming that you have found that the
8 alleged conspiracy existed and the defendant was a member
9 of it. That is, the requirement of an overt act.

10 You may not find Mr. Mauro guilty unless and
11 until you are convinced that at least one overt act as
12 charged in the indictment was committed by at least one
13 of the conspirators, and that such overt act was knowingly
14 done in furtherance of the conspiracy.

15 The offense of conspiracy is complete when the
16 unlawful agreement is made and any overt act is done by
17 a conspirator to effect the objective of the conspiracy.
18 Hence, the overt act required is one which furthers an
19 objective or purpose of the conspiracy. It does not have
20 to be a criminal act or an act which of itself constitutes
21 an objective of the conspiracy. It may be an act which is
22 innocent on its face, such as crossing the street, but it
23 must be of such character that it furthers or promotes or
24 aids and assists in accomplishing a purpose of the con-
25 spiracy.

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2 It is not necessary for you to find that all of
3 the alleged overt acts charged in the indictment were
4 committed, nor is it necessary that an overt act implicate
5 the defendant on trial before you. It is enough that you
6 find that at least one of the three overt acts charged
7 in the indictment was knowingly done by a conspirator in
8 furtherance of the conspiracy.

9 I will now read to you so you have it in mind
10 at this point, the three overt acts which are charged in
11 the indictment.

12 As I have indicated, the Government must prove
13 beyond a reasonable doubt that at least one of these three
14 overt acts was committed in furtherance of the conspiracy.

15 Overt act number 1: On or about February 13,
16 1973, the defendant Pasquale Cocco and Joseph Mauro
17 attended a meeting at East 39th Street in the vicinity
18 of Avenue D, Brooklyn, New York.

19 Overt act 2: On or about February 16, 1973,
20 the defendant Pasquale Cocco attended a meeting at Paxton's
21 Restaurant, 74th Street and Second Avenue, Manhattan,
22 New York.

23 Overt act number 3: On or about February 27,
24 1973, the defendants Pasquale Cocco and Bruce Romanoff
25 attended a meeting at Paxton's Restaurant, 74th Street and

1 rkkm 21

2 Second Avenue, Manhattan, New York.

3 If you find beyond a reasonable doubt that a
4 conspiracy existed as charged in the indictment and that
5 during the existence of the conspiracy and after July 1,
6 1972, one of the three overt acts alleged was knowingly
7 done by one or more of the conspirators in furtherance of
8 some object of the conspiracy, proof of the conspiracy
9 offense is complete. It is complete as to each person
10 found by the jury beyond a reasonable doubt to have been
11 knowingly and wilfully a member of the conspiracy at the
12 time the overt act was committed, regardless of which of
13 the conspirators committed the overt act.

14 While the indictment charges in count one that
15 the conspiracy began on or about July 1, 1972 and con-
16 tinued to the date of its filing, that is, May 24, 1973,
17 it is not essential that the Government prove that the
18 conspiracy started and ended on or about those specific
19 dates. Indeed, in the present case, as I recall it, the
20 Government's proof ended on the evening of February 27, 28,
21 1973.

22 It is sufficient if you find that in fact a con-
23 spiracy was formed and existed for some substantial time
24 within the period set forth in the indictment, and that
25 at least one overt act was committed in furtherance thereof

1 rkkm 22

2 during that period.

3 The indictment charges the defendant Joseph Mauro
4 not only with conspiracy in count 1, but also, as I have
5 indicated, with the substantive offense of possessing and
6 selling the stolen cashier checks alleged in count two of
7 the indictment, which I read to you.

8 You will recall that I told you that a conspira-
9 tor is liable for the acts and statements of his co-
10 conspirators provided they were made within the scope of
11 the unlawful agreement as he saw it during the pendency of
12 the conspiracy, and in furtherance of its objectives. To
13 find the defendant Joseph Mauro guilty of the crime of
14 possessing stolen cashiers checks as charged in count 2
15 of the indictment, you must find beyond a reasonable doubt
16 the following.

17 1. That on or about February 27, 1973, Pasquale
18 Cocco and/or Bruce Romanoff had in their possession
19 cashier checks in an amount greater than one hundred
20 dollars.

21 2. That the cashier checks had been stolen from
22 a bank.

23 3. That on or about July 1, 1972, the First
24 National City Bank, Broadway and 56th Street, Manhattan,
25 New York, from which the checks had been taken or stolen,

1 rkkm 23

2 was a bank, the deposits of which were insured by the
3 Federal Deposit Insurance Corporation.

4 4. That the defendant knew that the checks had
5 been stolen from a bank.

6 5. That Pasquale Cocco ~~and~~ Bruce Romanoff
7 were members of a conspiracy to possess and sell said
8 checks.

9 6. That Joseph Mauro was a member of said
10 conspiracy with Pasquale Cocco and Bruce Romanoff to sell or
11 dispose of the said stolen cashier checks.

12 7. That Pasquale Cocco and Bruce Romanoff
13 possessed the checks in furtherance of the conspiracy.

14 Therefore, Joseph Mauro may be found guilty on
15 the charges contained in count 2, even if he was not present
16 at the meeting on February 27, 1973, when Pasquale Cocco and
17 Bruce Romanoff were in possession of the checks if the
18 Government establishes the seven elements that I have just
19 mentioned to you.

20 As to the element that Joseph Mauro knew the
21 checks had been stolen from a bank, a few more words may be
22 useful.

23 With respect to this element, the Government must
24 show that Mr. Mauro knew the checks had been taken
25

1 rkkm 24

2 and carried away from a bank by someone who had the intent
3 to steal them. It is not necessary, however, for you to
4 find that M & Mauro participated in the theft in any way,
5 or that he knew that the person from whom he received the
6 checks had participated in the theft.

7 It is also unnecessary for you to find that Mr.
8 Mauro or the person from whom he had received the checks
9 or the person who took the checks knew that the bank from
10 which the checks were taken was a bank, the deposits of
11 which were insured by the Federal Deposit Insurance
12 Corporation.

13 Because it is not possible to look into a man's
14 mind to ascertain his knowledge and intent, the only way
15 for you to determine Mr. Mauro's knowledge and intent is
16 for you to take into consideration all the facts and cir-
17 cumstances shown by the evidence, and to determine from
18 all such facts and circumstances whether the requisite
19 knowledge and intent was present. Direct proof is not
20 necessary. **knowledge** and intent may be inferred from all
21 the surrounding circumstances.

22 How do you go about determining the truth and
23 how do you appraise the credibility of the witnesses who
24 appeared before you, particularly the witnesses Anthony
25 Villano, Herbert Olsberg, Joseph Mauro and Pasquale Cocco

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who, I recall, are key witnesses in this case. The testimony of all witnesses is important, but I at least would call the testimony of those four witnesses key.

Well, you use your own plain everyday common sense. You take it into the jury room with you, and I hope when you come out you will have it with you as well.

You have seen the witnesses, you have observed the manner of their testimony and whatever credit you may give them must be determined by their conduct and their manner of testifying, and their relationship or interest in the outcome. In other words, you again apply your common sense, and your everyday experience.

You may, of course, take into consideration the interest of a witness. An interested witness is not necessarily unworthy of belief. It is a factor, however, which you may consider in determining the weight and credibility to be given to his testimony.

If any witness has wilfully testified falsely as to any material facts, you may disregard either all his testimony or accept such part of it as you deem worthy of belief, or as it appeals to your reason or judgment.

A witness may be discredited or impeached by contradictory evidence, or by evidence that at other times the witness has made statements which are inconsistent

1 rkkm 26

2 with the witness's present testimony. If you believe that
3 any witness has been impeached and thus discredited, it is
4 your exclusive province to give the testimony of that
5 witness such weight and credibility if any as you think
6 it deserves.

7 You may hear me sometimes refer to direct evi-
8 dence and to circumstantial evidence, and it is well to
9 explain now the difference between these two types of
10 evidence. Direct evidence is where a witness testified
11 to what he saw, heard or observed. What he knows of his
12 own knowledge. Something which comes to him by virtue of
13 his senses.

14 Circumstantial evidence is evidence of facts
15 and circumstances from which one may infer connected facts
16 which reasonably follow in the common experience of mankind.

17 Stated somewhat differently, circumstantial
18 evidence is that evidence which tends to prove a disputed
19 fact by proof of other facts which have a logical tendency
20 to lead the mind to a conclusion that those facts exist
21 which are sought to be established. Circumstantial
22 evidence, if believed, is of no less value than direct
23 evidence, for in either case, you must be convinced beyond
24 a reasonable doubt of the guilt of the defendant.

25 Let us take a simple example, one which is often

1 rkkm 27

2 used in this courthouse to illustrate what is meant by
3 circumstantial evidence.

4 We will assume when you entered the courthouse
5 this morning, the sun was shining brightly outside and
6 it was a clear day, there was no rain. The sky was clear.
7 Now assume in this courtroom the blinds are drawn, as
8 they are, and assume further that there are drapes drawn
9 over the blinds so you can't look outside. Assume as you
10 are sitting in the jury box, and despite the fact it was
11 dry when you entered the building, somebody walks into the
12 courtroom with an umbrella dripping with water, followed
13 in a short time by a man in a raincoat, and you observe
14 that the raincoat is quite wet.

15 On our assumptions, you can't look out of the
16 courtroom and see directly whether it is raining or not,
17 and if you are asked is it raining, you can't say you know
18 it directly of your own observation, but certainly upon
19 the combination of facts as I have given them to you, even
20 though when you entered the building it was not raining
21 outside, it would be reasonable and logical for you to
22 conclude that it is raining now.

23 That is about all there is to circumstantial
24 evidence. You infer on the basis of reason and experience
25 from an established fact the existence of some further fact.

1 rkkm 28

2 There are times when different inferences may be
3 drawn from facts when they are proved by direct or circum-
4 stantial evidence. The Government asks you to draw one
5 set of inferences while the defendant asks you to draw
6 another. It is for you to decide and for you alone to
7 decide what inferences you will draw.

8 Knowledge and intent exist in the mind. Since
9 it is not possible to look into a man's mind to see what
10 went on, the only way you have for arriving at a decision
11 on these questions is for you to take into consideration
12 all the facts and circumstances shown by the evidence,
13 including the exhibits, and to determine from all such
14 facts and circumstances whether the requisite knowledge and
15 intent were present at the time in question.

16 Direct proof is unnecessary. Knowledge and
17 intent may be inferred from all the surrounding circum-
18 stances. As far as intent is concerned, you are instructed
19 that a person is presumed to intent being actual and probable
20 for the ordinary consequences of his acts.

21 The greater a person's interest in a case, the
22 stronger the temptation to testify falsely. The interest
23 of the defendant who takes the stand is of a character
24 possessed by no other witness. Manifestly, he has a vital
25 interest in the outcome of the case. This interest is one

1 rkkm 29

2 of the matters you may consider along with all the other
3 attendant circumstances in determining the credence you
4 will give to his testimony. Here again you may find a
5 defendant is telling the truth despite his obvious interest
6 in the outcome, but you may consider the temptation to
7 testify falsely in evaluating his believability.

8 On several occasions I have mentioned the word
9 reasonable doubt in the context that the Government must
10 prove the case beyond a reasonable doubt.

11 What is reasonable doubt? A reasonable doubt
12 is such a doubt as would cause prudent men to hesitate
13 to act in matters of importance to themselves. It is
14 doubt which a reasonable person has after carefully
15 weighing all the evidence. Reasonable doubt is one which
16 appeals to your reason, your judgment, your common sense
17 and your experience.

18 Reasonable doubt is not caprice, whim or
19 speculation. It is not an excuse to avoid the performance
20 of an unpleasant duty. It is not sympathy for a defendant;
21 vague speculative or imaginary qualms or misgivings, are
22 not reasonable doubts.

23 It is not necessary for the Government to prove
24 the guilt of the defendant to a mathematical certainty or
25 beyond all possible doubt. If that were the rule, few men

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2 or women, however guilty they may be, would be convicted.
3 The reason is, that in this world of ours, it is practically
4 impossible for a person to be absolutely certain of any
5 controverted fact which by its nature is not susceptible
6 of mathematical certainty. .

7 In consequence, the law is such that in a criminal
8 case, it is enough that proof of a defendant's guilt be
9 established beyond a reasonable doubt, not beyond all
10 possible doubt.

11 If after a fair impartial and careful consider-
12 ation of all the evidence you are convinced of the guilt
13 of the defendant, you must convict. If, on the other
14 hand, after such a fair, impartial and careful considera-
15 tion of all the evidence you doubt the defendant's guilt,
16 you must acquit him.

17 Under your oath as jurors, you can't allow a
18 consideration of the punishment which may be inflicted
19 upon the defendant if he is convicted to influence your
20 verdict in any way, or in any sense enter into your deliber-
21 ations. The duty of imposing sentence ~~rests~~ exclusive-
22 ly upon the Court. Your function is to weigh the evidence
23 in the case and to determine the guilt or innocence of
24 the defendant solely upon the basis of such evidence and
25 the law. You are to decide the case on the evidence and

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2 the evidence alone, and you must not be influenced by
3 any assumption, conjecture or sympathy or any inference
4 not warranted by the facts until proven to your satisfaction.

5 Now, I will very briefly take a look at the
6 evidence presented in this case. The look that I take
7 is from my own notes and from my own recollection. It is
8 your recollection, ladies and gentlemen, which governs, and
9 I might also add, in the event I omit something, that does
10 not mean that you should not consider it. You should
11 consider all of the testimony and all of the exhibits in
12 this case.

13 After hearing briefly from three Government
14 witnesses who were employees of the First National City
15 Bank, who identified certain missing cashier checks and
16 indicated that they had not signed or countersigned those
17 checks, the Government called Anthony Villano. Mr.
18 Villano testified that up until very recently he was a
19 special agent of the FBI, with some twenty-four years of
20 service as I recall it. Nineteen of those years as an
21 agent. He said he met the man who he identified as Patty
22 Cocco on or about February 9, 1973, while working undercover
23 as Tony Romano. They had a brief conversation which he
24 indicated took about fifteen minutes, and they made an
25 appointment to meet again on February 13, 1973. The

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2 appointment was to meet at a social club in Brooklyn.
3 Mr. Villano testified that he went to Brooklyn in an
4 automobile, accompanied by Herbert Olsberg, that he pulled
5 up and found the social club was closed. However, you
6 will recall that very shortly after that, Mr. Cocco, who
7 testified later, indicated that he saw Mr. Villano, also
8 known as Mr. Romanoff, and came over to him. When they
9 met, Mr. Villano pointed out that he had Mr. Olsberg with
10 him and that Mr. Olsberg was the banker. This meeting
11 took place at about 9:00 p.m. on February 13, 1973.

12 Mr. Villano testified that he told Mr. Cocco
13 that the banker, Mr. Olsberg, was willing and able to
14 handle stolen cashier checks. According to Mr. Villano,
15 Mr. Cocco said he would have no dealings without his
16 partner. According to Agent Villano, they then drove
17 together ~~the~~ three men, Mr. Villano, Mr. Olsberg and Mr.
18 Cocco, to East 39th Street in Brooklyn, in mid-block near
19 Foster Avenue, and they got there at 9:30 or 10:00 p.m.
20 according to Mr. Villano. Mr. Villano testified that
21 Mr. Cocco told them in the car, we have ten million
22 dollars in stolen First National City Bank cashier checks
23 and I understand you can peddle them.

24 When they got to the East 39th Street location,
25 Mr. Cocco got out of the automobile and said something to

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the effect, I will go out and bring back my partner. A few minutes later, as I recall the testimony, he returned with his partner who he introduced as Joey. Mr. Villano identified Mr. Mauro, the defendant in this case, as the man who was introduced to him as Joey, on February 13. The introductions continued and Mr. Villano then introduced Mr. Olsberg as his banker. According to Mr. Villano, Agent Villano, Joey and Patty Cocco, as he called him, or Joey and Patty, as he sometimes called them, or "they" as he sometimes identified them, spoke concerning how a certain First National City Bank cashier check was doing. According to Agent Villano, one of them said it is in there, we can draw on it. It is in Switzerland, and remember it is your recollection of the testimony that governs. My recollection may be imperfect, and I want you to concentrate on what you recall, and absent that, you can have the Court Reporter read portions of this testimony back to you, and that goes for any of it or all of it.

At about that time, according to Agent Villano, Mr. Cocco told Mr. Mauro that Mr. Villano had access to counterfeit money. The subject was mentioned as ten dollar bills. According to Agent Villano, Mr. Mauro said, how many points could he get for it. According to Mr. Villano, he said he couldn't give an exact quote, at which point

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2 according to Agent Villano, Mr. Olsberg interjected to stop
3 that business, we can get rich clean without messing with
4 counterfeits, or words to that effect.

5 Mr. Cocco said that he had four checks worth
6 about ten million dollars that had been stolen from the
7 bank's warehouse. Mr. Olsberg was asked if he could
8 successfully handle these checks, and Mr. Olsberg indicated
9 in the affirmative. According to Agent Villano, one or
10 the other of Mr. Mauro or Mr. Cocco said that the signa-
11 tures on these cashier checks were a perfect forgery.
12 According again to Agent Villano, one of them said, we
13 have a check for two and a half million dollars deposited
14 in Canada transferred to Switzerland which has been out
15 six to seven weeks, and nothing has happened so far. One
16 or the other of them, according to Agent Villano, said, how
17 many checks can you handle, we have four checks. Again
18 Agent Villano testified that one of the two men, Mr. Mauro
19 or Mr. Cocco, said we could get one and a quarter points
20 each. Our boss gets 23 points, and you will get about 75
21 points. According to my recollection, Mr. Cocco then
22 said, if any one of the four checks clear, we will all be
23 rich.

24 A meeting was arranged for February 16th at
25 Paxton's Restaurant. On that date at Paxton's Restaurant

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2 in Manhattan, Mr. Olsberg, Mr. Villano, Mr. Cocco, and
3 a man by the name of Mario met. Mario was later identified
4 by Mr. Cocco as Mario Argentini, who does not appear in
5 the case at any other time or place.

6 At this meeting, Mr. Cocco advised Mr. Villano
7 and Mr. Olsberg that he is very sorry his boss couldn't
8 make it. They discussed the checks. Mr. Cocco said the
9 checks were still available, and at that time according
10 to Agent Villano, he showed Mr. Olsberg a photostatic
11 copy of one check. Mr. Cocco said that it would be
12 necessary as evidence of good faith for Mr. Villano and
13 Mr. Olsberg to put \$25,000 into a bank escrow account in
14 the name of Mr. Olsberg and his, Mr. Cocco's, boss.

15 According to Agent Villano, another meeting was
16 arranged for February 20. Mr. Cocco did not appear at
17 that meeting, and there were some telephone conversations
18 back and forth and a meeting was arranged for February 27
19 at Paxton's Restaurant. Mr. Olsberg, Mr. Villano came to
20 the restaurant and there met Mr. Cocco and a man who he
21 introduced as his boss, and introduced him at that time
22 as Bruce. In that conversation Bruce said he was there
23 to firm up the deal. He said he had four First National
24 City bank cashier checks which had been stolen in such a
25 way that their absence would not be noted. He asked that

1 rkkm 36

2 Mr. Olsberg and Mr. Villano place \$50,000 in escrow. Mr.
3 Villano said he protested, that there had been previous
4 discussion about \$25,000. Bruce then indicated, perhaps
5 \$25,000 would be all right. There was then discussion
6 relative to points again, and according to Agent Villano,
7 Bruce was to get 23 points, that is, 23 per cent of what
8 would be derived from the sale of one or more of these
9 cashier checks.

10 Mr. Cocco and Mr. Mauro, according to Agent
11 Villano, were to get two and a half points, and he and
12 Mr. Olsberg would have approximately 75 points. Mr.
13 Olsberg described a complicated arrangement. He said
14 something to the effect there was a bank in Switzerland,
15 there would be a Bahamian account, cash would be sent to
16 Florida and so on. Mr. Villano testified that he didn't
17 follow the entire conversation but that was the gist of it.

18 According to Agent Villano, Mr. Cocco then left
19 the table in the restaurant and returned a few minutes
20 later with an attache case. At that point, Mr. Villano
21 and Mr. Cocco left the table and remaining at the table
22 were Bruce, later identified as Bruce Romanoff, and Mr.
23 Olsberg and the attache case.

24 There was extensive cross examination by defense
25 counsel of Mr. Villano, and among other things, the

1 rkkm 37

2 conversation included questions relative to what happened
3 on February 13, 1973 at that meeting.

4 On cross examination, Agent Villano testified
5 that Mr. Olsberg stated at that meeting on February 13, in
6 the presence of Mr. Cocco and Mr. Mauro that he wanted to
7 see the First National City Bank cashier checks that they
8 were talking about.

9 Agent Villano testified that Mr. Mauro brought
10 up that they had a check for \$2,500,000, that they had
11 given the check to someone who was shopping the check.
12 Agent Villano on cross examination testified at the
13 meeting on February 13, at which Mr. Mauro was present,
14 Mr. Mauro participated in the conversation regarding
15 cashier's checks. He was unable to state in a number of
16 instances who, between Mr. Mauro and Mr. Cocco, said what.
17 He testified that they both participated in the conversa-
18 tions regarding cashier's checks.

19 Agent Villano testified that February 13 was
20 the only time he ever met with Mr. Mauro, that the meeting
21 took some fifteen to twenty minutes.

22 He acknowledged they discussed counterfeit tens.
23 He said Mr. Mauro thought he could do something with
24 counterfeit tens. He testified that when Mr. Olsberg and
25 Mr. Villano were introduced to Mr. Mauro, Mr. Cocco said

1 rkkm 38

2 Mr. Olsberg was the banker who would handle the First
3 National City Bank checks, and that he had the outlets
4 for them.

5 The Government's next witness was Herbert
6 Olsberg, who you will recall. He testified that he had
7 been an undercover agent for some fourteen months, and his
8 function consisted in part of buying checks or other items
9 at the request of the Federal Bureau of Investigation.
10 He testified that he received \$4,500 reward on March 15,
11 1973 after the recovery of three missing First National
12 City Bank cashier checks. He classified himself as a
13 Federally relocated witness. He admitted he had been
14 convicted on two counts of fraud and one count of an NSF
15 check in 1964. I think we established that an NSF check
16 was a check on which there were not sufficient funds in
17 the bank upon which it was drawn.

18 He testified that he first met Mr. Cocco on the
19 evening of February 13, 1973; that he was introduced to
20 him by Mr. Villano at about the same time and in the same
21 manner as had been indicated earlier by Agent Villano.
22 He testified that Mr. Cocco told him that he wanted Mr.
23 Villano and himself, Mr. Olsberg, to meet Mr. Cocco's
24 partner. That they then drove to East 39th Street where
25 Mr. Cocco left the car and returned with a man who he

1 rkkm 39

2 introduced as his partner Joey. Again in court, Mr.
3 Olsberg identified Joey as Mr. Mauro. Mr. Olsberg testi-
4 fied when Mr. Mauro got into the car, among other things,
5 Agent Villano showed Mr. Mauro a ten dollar bill that was
6 allegedly counterfeit. Mr. Mauro expressed interest in
7 the bill. According to Mr. Olsberg, Mr. Cocco handed
8 some stock certificates to Agent Villano in the car.
9 They apparently were returned to Agent Villano because
10 they weren't worth very much. You recall there was
11 testimony on that subject at some length. I will leave it
12 to your recollection relative to the matter of the stock
13 certificates. According to Mr. Olsberg, Mr. Cocco then
14 said after he handed back the stock certificates to Mr.
15 Villano, we have bigger things to talk about.

16 Now we have four men in the automobile according
17 to Mr. Olsberg, Special Agent Villano, Mr. Olsberg, Mr.
18 Cocco and Mr. Mauro.

19 Mr. Cocco, according to Mr. Olsberg, said that
20 he and his partner were in possession of stolen First
21 National City Bank casher checks, that he and his partner,
22 Mr. Mauro, were to get two and a half points in connection
23 with any money obtained for those checks, that his boss
24 was to get twenty-three points. According to Mr. Olsberg,
25 Mr. Mauro asked what he, Mr. Olsberg could get for the

1 rkkm 40

2 checks. According to Mr. Olsberg, he said he didn't know.

3 Mr. Olsberg testified that Mr. Cocco said that
4 one cashier's check was then being worked, and that
5 another check had been given to another party, that it
6 was now marked up and it couldn't be used. According to
7 Mr. Olsberg, Mr. Cocco said that they had three checks.
8 Mr. Olsberg said that Mr. Cocco said this, that they had
9 three checks which were perfect forgeries, and each of
10 them were over two million dollars.

11 The testimony then moved, according to my
12 recollection, and yours may recall more, to a meeting on
13 February 15, at about 9:40 p.m. at Paxton's Restaurant.
14 At this February 16th meeting, according to Mr. Olsberg,
15 Mr. Cocco said that he and Mr. Mauro had discussed the
16 split, that he and Mr. Mauro would take two and a half
17 per cent. The boss would take ~~twenty-three per cent.~~ At least
18 time Mr. Cocco gave Mr. Olsberg the photostatic copy of
19 a First National City Bank cashier's check in the amount
20 of \$2,760,000.00, containing the name Clark Gorman as
21 payee.

22 At that time according to Mr. Olsberg, Cocco
23 asked for \$25,000 as security for one of the checks that
24 would be given to Mr. Villano, and Mr. Olsberg.

25 According to Mr. Olsberg, it was agreed that

1 rkkm 41

2 \$25,000 was to be put up.

3 There was a third meeting at Paxton's Restaurant
4 on February 27 at about 10:05 p.m., and there Mr. Olsberg
5 said he met Mr. Cocco and a man who Mr. Cocco introduced
6 as his boss Bruce, later identified as Bruce Romanoff.

7 According to Mr. Olsberg, Mr. Romanoff said
8 they had possession of well over two million dollars in
9 stolen First National City Bank travelers checks, what
10 could Mr. Olsberg do with them. Mr. Olsberg said he
11 would have to see the checks.

12 According to Mr. Olsberg, Mr. Romanoff handed
13 over three photographs. He discussed the cut, and Mr.
14 Cocco said, according to Mr. Olsberg, Mr. Romanoff was
15 to get 23 per cent, Mr. Cocco and Mr. Mauro would get
16 2 and 1/2 per cent. of the proceeds and Mr. Olsberg and
17 Mr. Villano would receive the balance. They discussed
18 ~~the~~ matter of escrow. Mr. Romanoff requested \$50,000
19 to be placed in a safety deposit box in escrow. Mr.
20 Olsberg protested and said we already discussed \$25,000.
21 Mr. Romanoff according to Mr. Olsberg then agreed to
22 have \$25,000 placed in a safety deposit box in Brooklyn
23 with two signatures to be on it. There was some question
24 as to whose signatures they would be. It was raised on
25 cross examination. I leave it to you to determine what

rkkm 42

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1 they said relative to the matter of two signatures to be
2 placed on the bank safety deposit box.
3

4 Then Mr. Olsberg and Mr. Romanoff discussed
5 disposition of the checks.

6 At that point, Mr. Cocco went outside and
7 returned with a brief case or an attache case. Mr. Villano,
8 Agent Villano and Mr. Cocco then left the table, leaving
9 Bruce Romanoff and Mr. Olsberg at the table with the
10 attache case. At that point, Mr. Romanoff opened the
11 case, and handed to Mr. Olsberg three cashier checks
12 in the total amount of \$8,410.00 to examine and return.
13 Mr. Olsberg testified he did so and then handed the three
14 original checks and the photostatic copies back to Mr.
15 Romanoff. The three checks were identified by Mr.
16 Olsberg, and are Government's Exhibit 2, 3 and 4 in
17 evidence. They are available to you should you wish to
18 see them.

19 On cross examination, Mr. Olsberg indicated
20 that he had been told a few days before February 9 to
21 stand by for duty as an undercover agent. He testified
22 that on the evening of February 13, he accompanied Mr.
23 Villano to Brooklyn. They discussed what they would do
24 if the cashier checks were presented. Mr. Villano
25 suggested, according to Mr. Olsberg, that as part of what

1 rkkm 43

2 they were doing, he would bring up the subject of counter-
3 feit tens. Mr. Olsberg said that shortly thereafter they
4 met Mr. Cocco and he entered the car in which Mr. Olsberg
5 and Mr. Villano were riding. At that time while he was
6 in the car, according to Mr. Olsberg, Mr. Cocco returned
7 those stock certificates which I have mentioned to Mr.
8 Villano in Mr. Olsberg's presence, and according to Mr.
9 Olsberg on cross examination, the return of those stock
10 certificates took place after the car was parked across
11 the street from Mr. Mauro's house. According to Mr.
12 Olsberg, Mr. Cocco returned those stock certificates after
13 Mr. Mauro had finished talking about the ten dollar bills.
14 Mr. Olsberg indicated again that Agent Villano had shown
15 Mr. Mauro a counterfeit ten dollar bill in the car. As
16 I recall the testimony, Mr. Villano handed the ten dollar
17 bill to Mr. Mauro, who examined it under the dome light
18 of the car and later on it was indicated that he kept the
19 ten dollar bill and took it with him when he left the car.

20 Mr. Olsberg testified that MR. Cocco in the
21 presence of Mr. Mauro in the car, this is the cross
22 examination as I recall it, said that he had three stolen
23 First National City Bank cashier checks, in the amount
24 of about two million dollars each, and that he had
25 partners, one of whom was Mr. Mauro.

1 rkkm 44

2 Mr. Mauro, according to Mr. Olsberg, and this
3 is from Mr. Olsberg's cross examination, asked Mr. Olsberg
4 how much he could obtain for the three cashier checks.
5 According to Mr. Olsberg, Mr. Mauro discussed the cashier
6 checks on three different occasions, on the evening of
7 February 13. There was some cross examination relative
8 to grand jury testimony. That is available to you. In
9 essence, the point was raised by defense counsel that at
10 least at his first grand jury appearance, Mr. Olsberg
11 had not mentioned the name of Joseph Mauro. Mr. Olsberg
12 stated that in the grand jury he only answered the
13 questions asked of him. He did not volunteer.

14 Mr. Olsberg indicated that Mr. Mauro spent about
15 25 minutes in the automobile on the night of February 13,
16 that after that he never saw Mr. Mauro again.

17 On redirect examination, Mr. Olsberg testified
18 on April 1, at a second grand jury appearance, he was
19 introduced by Mr. Cocco to Mr. Mauro as his partner, and
20 he so advised the grand jury. Further, that he told the
21 grand jury that they requested two and a half points of
22 the total amount of money obtained on the checks.

23 There were two FBI agent witnesses who followed
24 and testified briefly. I won't go into detail on their
25 testimony other than to note it was Agent Cole and Agent

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2 Dillon of the FBI.

3 We turn now to the defense case. I should like
4 to describe the testimony of two of the four key witnesses.

5 The defendant Joseph Mauro testified. He stated
6 he is married, has two children, was never convicted of
7 any crime, that he knows Mr. Cocco two and a half years.
8 He testified that on February 13, Mr. Cocco came to his
9 house on that evening. He and his wife and four friends
10 were there. Mr. Cocco came to the door and said, come
11 outside, I have some people I want you to meet. He said
12 he went across the street with Mr. Cocco on the evening of
13 February 13, 1973 and got into a black Cadillac.

14 There seems to be no question that there were
15 four people in the Cadillac, once Mr. Cocco and Mr. Mauro
16 got in, and the four people were Special Agent Villano,
17 Mr. Olsberg, together with Mr. Mauro and Mr. Cocco.

18 As Mr. Mauro testified, Mr. Cocco said these
19 fellows have some good counterfeit money, ten dollar bills.
20 Mr. Mauro testified that he said this is no time for
21 counterfeit money, that he had been arrested in connection
22 with counterfeit money, but that he had been acquitted,
23 and that he felt this was not the time to be involved
24 with counterfeit money. He did indicate that Mr. Villano
25 showed him a ten dollar bill.

1 rkkm 46

2 He testified that he was in the car for fifteen
3 minutes, tops. He testified that nothing was said during
4 his time in the car with reference to stolen cashier checks.
5 There you have an issue of fact. I have indicated what
6 the Government's witness said. I have indicated now that
7 the defendant testified and said while he was in the
8 car, nothing was said with reference to stolen cashier
9 checks. He said most of the conversation involved the
10 matter of the money. He was asked if he could do anything
11 to sell counterfeit tens. He said if he could, he would
12 notify Mr. Cocco who would then in turn notify Agent
13 Villano.

14 He testified that they told him to keep the ten
15 dollar bill, and that he left the car with the parting
16 words, if anything happens, I will let you know.

17 He stated flatly that he knew nothing about the
18 cashier checks whatsoever.

19 On cross examination, he testified he had no
20 prior business dealings with Mr. Cocco, no other discussions
21 than counterfeit money, that he knows Mr. Romanoff and Mr.
22 Cocco. Mr. Cocco had said in essence that he had some-
23 thing going. He said he first found out about First
24 National City Bank stolen cashier checks from the news
25 media, and later from the FBI.

1 rkkkm 47

2 The defense then called Pasquale Cocco. You
3 remember Mr. Cocco, who testified Wednesday morning. Mr.
4 Cocco stated that he knows Mr. Mauro and has known him
5 for about two, two and a half years. He testified that he
6 first met Special Agent Villano on or about February 8 or
7 9. He was introduced to him by one Tom or Tommy Ferula.
8 He said that Agent Villano offered him some stocks, some
9 \$38,000 worth of stocks as I remember. He said that
10 Agent Villano would take two or three hundred dollars
11 for the stock. They then arranged to meet again. They
12 met on February 13. He told Mr. Villano at that time
13 the stock was no good. He handed him the stock back,
14 and suggested that Mr. Villano return the stock to its
15 rightful owner by mail. At that point he acknowledged he
16 met Mr. Olsberg first.

17 They discussed, according to Mr. Cocco, the
18 matter of counterfeit money, and his testimony was that
19 Mr. Villano, Agent Villano said, I have a bunch of phony
20 tens, and at that point Mr. Cocco suggested that they
21 drive to Mr. Mauro's house. He says they did not discuss
22 teller's checks or cashier checks. He testified, this is
23 on his direct examination, that he introduced Mr. Mauro
24 in the car to Mr. Olsberg, and Agent Villano, and he
25 told Mr. Mauro that Agent Villano, who he knew as Tony

1 rkkm 48

2 Romano, had some bad tens. In his presence Mr. Mauro was
3 given a ten by Agent Villano. He looked at it, apparently
4 under the dome light of the car, and kept it, and according
5 to Mr. Cocco, Mr. Mauro said he told the other gentlemen
6 that he would let Mr. Cocco know if he knew anyone who
7 would be interested in the tens.

8 Mr. Cocco stated that on February 13, there was
9 no discussion regarding the cashier's checks. He testified
10 that thereafter he called Agent Villano on a Wednesday,
11 told him that they hadn't heard anything from Mr. Mauro,
12 arranged to meet at Paxton's Restaurant on a Friday, met
13 with Special Agent Villano and Mr. Olsberg at Paxton's
14 Restaurant on the 16th of February and he, Mr. Cocco,
15 brought with him his friend Mario, who at that point was
16 identified as Mario Argentin.

17 Agent Villano said, I hear you have something,
18 cashier checks. Mr. Cocco said, I will have to speak with
19 my partner Mr. Romanoff. Mr. Cocco stated he never
20 discussed cashier checks with Mr. Mauro.

21 On cross examination, Mr. Cocco indicated when
22 he first spoke with Special Agent Villano, he told the
23 agent that he knew someone who had some Israel bonds and
24 there was also some mention of DuPont stock. He says
25 that on the 13th, Special Agent Villano spoke about stocks

1 rkkm 49

2 and the tens. He testified that he thought he said he
3 told Special Agent Villano and Mr. Olsberg on the 13th,
4 he thought Joey Mauro might be interested in the tens.
5 They then drove over to Mr. Mauro's house and Mr. Cocco
6 got out and went up to the front door and spoke with Mr.
7 Mauro. According to Mr. Cocco, he told Mr. Mauro, I have
8 some fellows, they have some phony money, come down and
9 talk with them for five to ten minutes. He said that Mr.
10 Mauro accompanied him to the car, got into the car and
11 that there was conversation relative to ten dollar bills.
12 He said that Mr. Mauro said, Mr. Cocco testifying, that
13 Mr. Mauro said he might know somebody who was interested
14 in the tens.

15 He did say he introduced Mr. Mauro as his partner.
16 He said he introduced Mr. Mauro as his partner because he
17 thought he might get something out of the counterfeit
18 money deal. He said they discussed the money, and Mr.
19 Mauro felt the bill and said if he knew anyone, he would
20 call Mr. Cocco, who would in turn call Agent Villano.

21 He said that the conversation in the car lasted
22 about fifteen minutes. He testified that there was no
23 mention of First National City Bank cashier's checks,
24 that there was no mention of a First National City Bank
25 cashier's check working in Switzerland. He said there was

1 rkkm 50

2 discussion of stolen checks. He testified that there was
3 no discussion of perfect forgeries on the 13th. He did
4 indicate relative to the cashier checks at one point that
5 he knew they were stolen, and at another point he testified
6 he assumed they were stolen.

7 His testimony was that the First National City
8 Bank checks came up first at the meeting at Paxton's
9 Restaurant on February 16, and at that time he said he
10 might have said that the check or checks that they had
11 were perfect forgeries.

12 He testified on cross examination after his
13 arrest ~~and after~~ his plea of guilty, and he did testify
14 that he pleaded guilty in this Court, and as I say, that
15 should not be taken against Mr. Mauro; that he told the
16 FBI after his arrest but before his plea of guilty that
17 he had no knowledge of any stolen cashier checks. As I
18 indicated, he later pleaded guilty to certain of the charges
19 contained in this indictment and that should not be taken
20 in any way against Mr. Mauro.

21 I have summarized the testimony. It is your
22 recollection of that testimony which governs. If you
23 remember it differently than I, it is your recollection
24 that governs. If you want anything read back to you,
25 it will be done at your request.

1 rkkm 51

2 If you believe that the testimony shows beyond
3 a reasonable doubt that the defendant is guilty of the
4 charges made in the indictment, you will find the defendant
5 guilty. If you find that the charges have not been proven
6 beyond a reasonable doubt, or that the evidence respecting
7 the defendant is as consistent with innocence as with
8 guilt, the defendant should be acquitted. On the other
9 hand, if you find that the law has been violated, you
10 should not refuse because of sympathy or for any other
11 reason to render a verdict of guilty.

12 There are twelve people on this jury. Any
13 verdict must be the unanimous verdict of all of you.

14 I should point out, however, that no one should
15 enter upon deliberations in the jury room with such prior
16 opinion that he would refuse to change it if convinced
17 by an intelligent argument of the other jurors or jury
18 that they are right.

19 However, you should not do violence to your own
20 well founded opinion and common sense. As I said before,
21 you take your good common sense into the jury room and
22 I expect when you come out of the jury room, not only will
23 you have your same good common sense with you, but when
24 you come out of the jury room, your good ~~conscience~~ will
25 accompany you.

1 rkkm 52

2 Each of you is entitled to your opinion. In
3 other words, each of you must decide the case for himself
4 or herself after thoroughly reviewing the evidence and
5 exchanging views with your fellow jurors. The manner
6 in which you will deliberate will be first to deliberate
7 relative to count one, and to reach agreement on that
8 count, if possible, guilty or not guilty, then to
9 deliberate on count two, and to reach an agreement if
10 possible on that count, either guilty or not guilty, and
11 when the jury has a verdict, they will indicate to the
12 marshal who will be in charge of the jury that you have
13 reached a verdict, and your verdict will be reported and
14 recorded in open court.

15 Gentlemen, is there anything you wish to bring
16 up to the Court before I have the jury retire to deliberate?

17 MR. EBERHARDT: The Government has nothing
18 further.

19 MR. ROSENBAUM: If we may have a side bar
20 conference?

21 THE COURT: You may.

22 (At the side bar.)

23 MR. ROSENBAUM: If it please the Court, there
24 was one aspect in the facts of the testimony that I believe
25 your Honor should bring out. Agent Villano, who testified

1 rkkm 53

2 to my recollection there was no use of any type of
3 electronic devices, and Mr. Olsberg not only said it was
4 in the car, but that Mr. Villano knew about it because he
5 actually tested it in Mr. Olsberg's presence.

6 I believe your Honor properly had brought out
7 certain conflicts of testimony between certain witnesses,
8 but we saw that this conflict is substantial in nature
9 and should also be brought out as to give testimony between
10 two witnesses.

11 MR. EBERHARDT: The Government objects at this
12 point. The Court has already marshalled its evidence. I
13 think it would be prejudicial at this point to go back
14 and point out any inconsistency beneficial to the
15 defendant. The Court obviously has not hit all incon-
16 sistencies. I am sure the jury is aware of that fact.

17 THE COURT: I indicated to the jury that my
18 marshalling of the evidence was not intended to be
19 complete, that it was their recollection which governed.
20 Therefore, I will decline to supplement my charge as
21 requested.

22 You have your exceptions.

23 Anything else?

24 MR. ROSENBAUM: No.

25 MR. EBERHARDT: No.

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(In open court.)

Ladies and gentlemen, as soon as our first alternate returns from the jury room, I will have you retire to begin your deliberations.

(Marshals sworn.)

THE COURT: Ladies and gentlemen, you are now requested to retire to begin your deliberations, and should you need anything, you will communicate with the Court by means of notes.

One final thing in this regard. In the event you go out to lunch, you undoubtedly will be sitting at separate tables. I will ask you please to not have any discussion of this case unless and until all of you are present, and that means in your jury room and when you go to lunch, to stop discussion of the case, and when you come back, you should and will resume your deliberations.

(The jury commenced its deliberations at

12:10 p.m.)

THE COURT: The Court notes the jury has now retired to begin their deliberations. I would ask counsel and the defendant to remain available until one o'clock, and at that point, I anticipate sending the jury to lunch unless there is a verdict beforehand, and would then direct you to return here at 2:15.

AFFIDAVIT OF PERSONAL SERVICE

**STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:**

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 28 day of MARCH, 1974 at No. U.S. Ct. House, Foley Sq. N.Y.C. deponent served the within Appendix upon U.S. Atty. So Dist. of N.Y. the Appellee herein, by delivering a true copy thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,
this 28 day of MARCH 1974

Edward Bailey
Edward Bailey

William Bailey
.....
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0152945
Qualified in Richmond County
Commission Expires March 30, 1975